App. F. IX-4

Previous References. (1941)
LR 372-32
Law 126-40
(172)

1942 (Law)

File No. 255-42

Serial Nos. 1 - 4

Later References.

Law 45-43
(61-62)

GENERAL AND REVENUE SECRETARIAT

Serial Nos. Formerly

Part B for March 44.

SUBJECT

R. A. 128/40-41 on the file of the High Court of Mysore.
re Bank of Mysore Ltd. in the matter of Secy to Govt.)

2464 J 2530

R.A. no. 128/40-41 on the file of the High Court of Mysore (The Bank of Mysore Ltd Vs Chief Secy, Govt)

General and Revenue Secretariat — File No. 255 of 194 2 — [App. F. III-2

Serial No.

Letter no. 283/ dated 16th October 1942 from t Advocate General intimating that the above appea has been dismissed with costs and also inviting reference to the remarks of the Chief Justice Observin that Govt could not purchase property in sales held under Chapter XI of the Land Revenue Code and that Rule 99(b) in that respect was invalid.

Letter no. C. 9. dated 15th October 1942 from t Director of Industries and Commerce also intimati the result in the appeal case and seeking instructio regarding further action to be taken in the matte

1) By the decision now given in the appeal cas Govt loses the right, title and interest in the properti purchased in the Revenue sale.

2) In O.S. 15/41-42, on the file of the Distric Judge Mysore, it has been ordered that the sum of Rs 6000/- deposited by Mrs Kanthamma as purchase money for buying the houses under reference, is to be refunded to her son Virendra-Kumariah together with interest thereon upto date of payment.

~~By the decisions given in the two cases referred to in para 1 and 2 above, Govt would stands to lose both the deposit amount and the houses.~~

3) The Director of Industries and Commerce

2464 · 25330

R.A. 128/40-41 on the role of the High Ct (Bank of Chettinad Ltd Vs Chief Court)

requests for instructions regarding the further action to be taken in the matter

4) This and the several connected papers are submitted for orders.

Kelly 4/11

5) Mr. Cornelius

Mr. Cornelius to see Mr. Stuart Case ? Exhibits, Jeet 3 5/11/42

6) A draft to the Advocate General requesting him to obtain and forward immediately copies of judgment in the appeal case is submitted for approval

Kelly 5/11

P.3024/ dated 6-11-42 issued to the Advocate General requesting him to obtain & forward Copy of Judgment in the case

Memo. No. P.3025/ dated 6-11-42 issued to the Director Sandalwood oil factory, forwarding copy of letter addressed the Advocate General.

Letter No. 413/ dated 28th November 1942 from the Advocate General forwarding Copy of judgment & decree in the appeal case

7) The copies of judgment and decree received from the Advocate General are herewith submitted

2530 ∫ 3690

R.A. no 128/40-41 on the
High Court of Mysore —

Serial No.

and orders are sought in regard to paras 4 & 5 supra and also in regard to the amendment proposed by the Advocate General in P.a-D.II.

Kaul 11/12 M

8) Please see note on the file as desired M 11/1

Deleted from file bearing Diary no 6027. Kaul 11/1

9) The file will if approved be now forwarded to the Advocate general for opinion as to whether Rule-99-(b) ~~of the~~ framed under the Mysore Land Revenue Code and governing sales held under Section 193 of the Land Revenue Code, requires any modification in view of the remarks of the High Court in this case

Kaul 11/1 M

10) This may be done Law Secretary 3/41

Cys 12/1-43

SECY. LAW DEPT. 8478 GOVT OF MYSORE

O.No.P672 42-43 12-1-43

No. 687/42-43 12.1.43

11) Kindly see note on page 4 of the Advocate General for favour of opinion.

Rowell 12/1/43

No. Dro. 58/42-43 13.1.43

12) There is no defect in the rule in question (Land Revenue Rules 99(b)). The difficulty is in seeking to apply a law (Sec.193, Land Revenue Code) which concerns the revenue administration, i.e., Sovereign side of the Government, where the Government is supreme and is under no obligation to seek the aid of the Civil Court for the realisation of its

SECY. LAW DEPT. 8465 GOVT OF MYSORE

R. A 128/40-41 on the file of this.
(Bank of Madras Ltd vs Rhind Sea Beach)

File No. of 1

its dues, to matters outside such administration, as is the case with dues on the industrial or business side of the Government where the Government is in the same position as any private individual and is obliged to seek relief in a Civil Court and is accordingly bound by the provisions of the Indian Contract Act and the Civil Procedure Code. Hence (in my opinion) the Government cannot get rid of this obligation by any rules that it may make under Sec.193, Land Revenue Code the scope of which must, in reason and by the preamble to ~~that~~ the Act, be limited to realisation of revenue dues, i.e., dues on the administrative side of the Government.

Co-operative Societies. So far as the Code refers to the collection of Land Revenue, it is seen that the Code has made arrears of Land Revenue a charge on the land in which arrears are due, & so far as in that respect in the position of a mortgagee, & the Code provides to recover such arrears by sale of the land, & in the last event by forfeiture. In the case of Court recovery the dues of the Co-Societies under Ch XI, Court have made provision in the Code by inserting a Section like See 180 A of the Code, & the Co-Societies must that Section can apply to the Bapatla Commissioner for possession & sale of the property sold in the Rev: Auction, just as is provided for in the Madras Civil Pro. Code. But See 193 extends the provisions of Ch XI to money due & fort under the contracts. The Chief Justice does not say that such a provision is ultra vires. But he says that in such cases, & the law as stands, Court must adopt the procedure laid down for collection of arrears of Land Rev; & to the very end, viz). that Court in the salvo must in such cases buy the property sold in Rev: Auction for the recovery of such dues just as is done in cases for the recovery of arrears of Land Revenue. In the latter case they can buy, for, in the Code for there is provision for forfeiture of such lands whereas in the former case there is no such provision for that Court in respect of other amounts due & fort- however there is no such provision like in the

in respect of arrears for recovery made
dues other than Land Revenue. If in recovery dues
of suit other than Land Revn., the procedure laid
down in Ch XI is followed & it is very clear, then
such a procedure would be an "absurd proce-
-dure" as Court see 179 + shows how absurd it would
be for suit to follow the provisions of Sec 179. The
learned Counsel for the appellants has in my opinion
correctly put the case of bidders in the Rev Sale held
for the recovery of arrears due to them on
contracts executed under Sec 193, their only
remedy for them is to resort to the Court of law
to recover their amounts. Though he does not say
that the provision laid down in Sec 193 is ultra vires
yet he says that Rule 99 thereof is framed ultra
-Act, especially the latter portion thereof is
ultra vires. He concludes thus:- "If there is
nothing in the Code to indicate that the Govt
can be held by a fiction in any circumstances
to buy their property for themselves - & I can find
nothing in the Code to that effect - then it is
open to the Govt to make a rule purporting
to give themselves that power. The rule appears
not to be a rule which in that sense
it (the latter part) the Govt have no power
- under ~~under~~ the provisions of the C. P. Code"

16) With reference to these remarks that the learned Chief Justice held that for land derived under title over the last thirty years & under the Act.

(2) These remarks observations clear that through clause 6 the effect that arrears of any other contracts can be recovered as arrears of land Revenue, may be inserted but it does not follow therefrom that procedure laid down in Ch XI can be allowed to its very end. Purchase money paid to the Collector for the recovery of said arrears, as is done in case of land & arrears because there is no statutory provision in the Code enabling the Govt to do so, then is in the case of land Rev arrears. The Chief Justice does not take objection to Rule 193 & the Rules objected to the latter part of Rule 99 & Rule 99, if any. Rules 4 & 5 Rule 99 pt. These rules may be sent for effecting the necessary

3
17/2/43

(6) The Rev Depts may be consulted

(7) No issues of appearance made by the Code between the mode of recovery of arrears due from land temporarily & thoroughly & the mode of recovery of the other arrears. Govt

R A - 128 [illegible] on the [illegible] of the High Court
File No. (Banerji Murder - Letter to Chief Secretary)
Current No.

The Provincial Govt
Land Revenue
by selling the right
title & interest in a
certain [illegible] to the defendant
[illegible] made [illegible] S 161

(14) Where does not see
the any distinction
against the Govt
purchasing the right
title & interest in Bata
Mandir case. The learned
J. appears to have
relied on [illegible]

(19) The Board should
not examine the
[illegible]

The facts of the case are explained in the judgm of the Chief Judge Sir D'Arcy Reilly and may be briefly stated as follows:-

2) In original suit No.28 of 30-31 on the file of the Bangalore District Court, the Government sued to recover a sum of over 8 lakhs of rupees from Vardamanaiya and others. Their claim against Vardamanaiya was settled by a compromise with his legal representatives after his death to the effect that they should pay Rs.20,000/- to Government, for Rs.6,000/- of which they mortgaged two houses in Mysore in favour of Government under a deed dated 6th March 1933 which provided for the Government as Mortgagee a right to sell and also a right to recover the amount if not paid in time as if it were an arrear of land revenue under the provisions of Section 193 of the Land Revenue Code. As the sum o: Rs.6,000/- was not paid within the time fixed the tw houses were put up for sale in auction by Government under the Land Revenue Code on the 4th March 1936 an were purchased by the Officer-in-charge of the Government Sandal-wood Oil Factory in his official capacity for Rs.6,000/-. After some proceedings the Government got possession of both the houses. On a representation made on the 10th July 1936 by Kantamma the third wife and widow of Vardamanaiya, the Government agreed to allow the lady to buy the two houses from them for Rs.6,000/-. Kantamma paid

the sale price but no sale deed was executed in her favour as there was some dispute regarding the intention of Government whether the houses should be sold to her for her own benefit or for the benefit of the members of Vardamanaiya's family including

In O.S.No.25 of 1928-29 on the file of the Mysor District Court, the Bank of Mysore got a decree for a larg amount against Vardamanaiya and others on a mortgage. The Bank realised the value of the mortgaged property and then applied to the court for a personal decree of Vardamanaiya's estate and during the pendency of the application the bank got the two houses in question attached on the 2nd of May 1933. The Bank obtained a personal decree against Vardamanaiya's estate and bought in/sale in the course of execution proceedings the two houses in question on the 7th July 1936. The Bank got possession of one of the houses, but failed to get possession of the other. As a result of the applications made to the court by the Bank and the Government. the Government ultimately got back the possession of both the houses. The Bank ther sued Government in August 1939 to redeem the mortgage for Rs.6,000/-. The suit was dismissed by the District Court and the Bank appealed to the High Court against this decision.

The High Court have ultimately held that the Government made no valid purchase of the two houses and that they were still only mortgagees with a right to recover Rs.6,000/-,in accordance with the documents executed by the legal representatives of Vardamanaiya and allowed the appeal to the extent of making a decree for redempti

P.T.O.

in favour of the Bank for Rs.6,000/-.

The judgment of the High Court in this case raises issues very important in their nature and far-reaching in their consequences. The High Court have held firstly, that the Land Revenue Code has not provided specifically for the Government purchasing the properties in sales held for arrears of revenue and that in the absence of any provision in the Land Revenue Code or any other enactment enabling Government to purchase property in sales held for recovery of arrears of revenue, the doctrine that no man can sell to himself prevails and that in sales also for recovery of arrears due to Government or any of their Departments, the Government cannot bid at the sale and purchase for themselves. Secondly, that Rule 99 of the Land Revenue Rules is ultravires of the legislature as the Government have no power to make such a rule under the provisions of the Land Revenue Code.

In regard to the dues to Government, which are recoverable, as arrears of land revenue, the general procedure that is being adopted is to bring the land to sale under the provisions of the Land Revenue Code and in the absence of bids from private persons, purchase the property on behalf of Government. A similar procedure is also being adopted in connection with the recovery of arrears of jodi etc., in respect of alienated villages. This will not be possible in future, if the position taken up by the High Court is accepted.

P.T.O.

27) In this connection it may be pointed out, that the procedure that is in vogue in Mysore is being adopted in Madras and the Bombay Presidency also. So far as the Madras Presidency is concerned reference is invited to Board's Standing Order No.45 according to which if no bid is made for land sold for arrears of revenue it should be purchased on behalf of Government at a nominal price, the amount of the purchase money being written off the accounts as irrecoverable with the sanction of the Collector. When there is good reason to suspect combination to prevent the realisation of the full value of the land. the officer conducting the sale is authorised to bid on behalf of Government, whether there are bidders or not, up to an amount

have an ~~erstwhile~~ right to lands purchased by them at sales for arrears of revenue

28) It has not been possible attempts made to obtain information so far as he Bombay Presidency was concerned as regards the mode of recovery of jodi, etc., due on alienated villages ~~was not successful~~. It is however, seen from Bombay (Land) Revenue Code that the procedure of offering a nominal bid on behalf of Government is being followed in the case of recovery of loans ~~of~~ advances under the Land Improvement Loans Act and the Agriculturists Loans Act. The recovery of Irrig

raised by the High Court that no person can sell to himself applies but it has, however, not been ~~in these province~~ considered illegal in the Province in the absence of any provision to the contrary. Even in Mysore there is no prohibition in any Act against Government themselves offering bids in sales conducted by them.

29) In the course of the judgment the Chief Judge has referred to certain disadvantages to which the defaulter would be subjected if the stand taken by Government should be conceded. This, it is submitted, can at best be considered a defect in the legislature and certainly not strengthening their position taken up by the High Court. The Chief Judge has referred to the anamoly of the Government paying themselves 25% of the purchase money on the conclusion of the sale, as if they were paying from one pocket to the other. In practice the deposit of 25% of the purchase money is being insisted upon as being made and there does not seem to be anything peculiar in this provision to justify the conclusion that on this ground alone the officer should not bid in sales on behalf of Government.

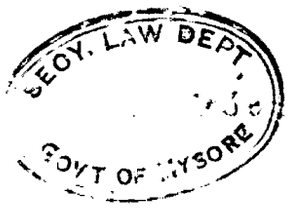
30) The decision of the High Court proceeds mainly on the basis that there is no statutory provision allowing Government to bid in such sales. It is submitted that if no express provisions were required at all, it must be for the contrary position that the Government should not bid at such sales. The Chief Judge further refers that the want of such a provision need not be regretted as the

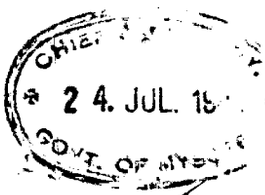
Government has other remedies would be available to Government to recover their dues. Even here the mere fact that other remedies do exist does not take away from Government the right which they otherwise possess. In this connection it is also submitted that Rule 99 of the Land Revenue Rules which follows the procedure adopted in other places cannot be considered to be ultravires of the legislature although the Rule in itself cannot be doomed as conferring the power on Government. The Chief Judge refers in the course of his judgment to the enactment of Section 180A. under which the party entitled to the payment of money for the recovery of which a sale of immovable property is held, may apply to the Deputy Commissioner for permission to purchase such property, which may be granted subject to such Rules as may be prescribed by the Government in this behalf and where a party purchases with such permission, the purchase money due by him and the amount for the recovery of which the sale is held may be set off against one another. An examination of the circumstances under which this section was introduced shows tha the primary object of introducing this Section was to avoid the hardship which the Co-operative Societies were put to in having to deposit the purchase moneys in even where sales were held fo the recovery of the arrears due to themselves. Although the original draft of the Section had no reference to either the ap for permission to purchase or for the grant of such permission provision was included at a later stage. Until this provisio included it does not seem to have been felt that there was any the Co-operative Societies itself bidding at the sale, but onl

by the Government processes might be required to apply for permission of the Deputy Commissioner to purchase the property. It may be that the procedure might lead to certain anamolous situation but that does not by itself mean that the procedure itself is wrong or illegal. The existing procedure may perhaps be continued and the matter re-argued before the High Court should any case come before it at any time in future.

3(1) The question whether the matter can be reopened before the High Court can be considered in the Land Department

in any





3(2) The question is of sufficient general importance, and the matter may have to be reviewed by the High Court

3(4) Portion A in the O/note above, briefly states the views of the High Court which they have expressed in the course of the judgment in this case. It is difficult to accept these views as final & conclusive & if necessary, a Full Bench may be constituted to reconsider the matter. The position will have to be argued and the ruling got changed.

Min R & L
this Secy Law

7/8/43

RA No 128/1941 on the file of the High Court
CBank of Mysore -vs- Chief Secretary, Govt

4433

OFFICE OF THE MINISTER
... & LAW
5 AUG 1943
No. 700.

35) The question may be taken up
the High Court in another similar
Case ... for
... supreme ... Bench
in this case itself.

36) If the provisions of Rule 11 of Code
bearing on the Pakistan
Mortgages & the Notice of the
High Court & the difference
between the procedure prescribed
for recovering arrears due to
Land forfeited & amounts
due & that prescribed for recovery
of other arrears provided for recovery
of arrears of land revenue are
explained, the High Court
may take a different view

37) The Land Secretary will
Revert back the Case
for a review of the order

Rev. & Decree
14/8/43

R & L
14/8/43

CHIEF SECRETARIAT
14 AUG. 1943
GOVT. OF MYSORE

CHIEF SECRETARIAT
14 AUG. 1943
GOVT. OF MYSORE

CHIEF SECRETARIAT
14 AUG. 1943
GOVT. OF MYSORE

Judgment of the Police Court
3600 pts

Continuation Sheet. File No. / Current No. of Page. 5179 9Fs

due, if any, [illegible]

The Solicitors who were instructed by the Treasury Branch to put up a defence with regard to the exact amount due. The Question in this case as affects the house in question about £50 - £60 to Maintain, & over been house, & which has been held that £50 been no rights. If the proper to obtain position may please be [illegible] & Mr. Smith who sent to the Secretary

3
5/1/44

The Assn. Secs. Law requires that the previous papers relating to the original suit which was compromised may be found with what exact amount due to Crown may be noted. Interest whether any money was paid by Kailamona Bevans the Solicitors & the two houses may also be noted

Previous records may be available in the Protection Br. If affects this may be referred to that Br. in placing the papers

The files headings of the S.O. Fr. Secs name & looked into & the papers are not traceable.

This Prot. Br. may be requested

[illegible] 11/3/44

See [illegible] necessary

13/3/44

WD 1140—GPB—50,000—5-11-42

The previous papers are being traced

862/43 487

Office of the Revenue Commissioner in Mysore.
Dated, Bangalore 26th M a y 1944.

27 MAY 1944

Judgment in R.A. No.128/40-41 on the file of the High Court of Mysore (Bank of Mysore Vs. Government of Mysore) Power of Government to make reules, in regard to purchase and sale of properties to themselves under the provision of Land Revenue Code.

I have the honour to return herewith the Secretariat file leading to Un-official No.4433/43-44 dated 15th August 1943, on the above subject which was obtained for reference on 3rd May 1944.

The receipt of the same may kindly be acknowledged.

Yours sincerely,

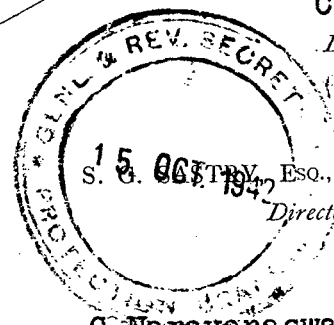
S.K. Venkataramana Iyer. Esq. B.A., B.L.,
Under Secretary to the Government.
General & Revenue Secretariat.

GOVERNMENT OF MYSORE

Law 55-42-2

No. C.9
Encl.

Office of the Director,
Sandalwood Oil Factory. Bangalore.
Camp, Mysore.
Dated 15th October 1942



FROM

S. G. SASTRY, ESQ., B.A., M.Sc. (Lond.),
Director, Sandalwood Oil Factory,
Bangalore.

TO

C.Narayanaswamy Naidu Esq., B.A., B.L.,
Secretary to Government of Mysore,
Law Department, Bangalore.
Camp, Mysore.

SIR,

Subject:- R.A.No.128/40-41 on the file of the High Court of Mysore (Bank of Mysore Ltd., vs. Chief Secretary to Govt. and another.

Refce:- G.O.No.P.212/Law 156-40-2 dated 12th July 1941.

In inviting your kind reference to the above, I have the honour to report for the information of Government that according to the letter dated 10th October 1942 (copy enclosed) received from Mr.K.Ramaswamy, B.A., B.L., Advocate, Mysore it is learnt that the appeal has been decided in favour of the Bank of Mysore Ltd., I request instructions of Government regarding further action to be taken in the matter.

As already reported in my letter No.529/62 dated 2nd October 1942, I had forwarded a cheque for Rs.9071/- as decreed in O.S.No.15/40-41 to Mr.K.Ramaswamy. The same has been returned by

by him stating that complicated questions arise in the case in respect of the bungalows and further action may have to be taken.

I have the honour to be,
S i r,
Your most obedient servant

Director.

"COPY"

Letter No.137 dated 10th October 1942 from Mr. K. Ramaswamy, B.A., B.L., Advocate, Mysore, to the Officer-in-charge, Sandalwood Oil Factory, Mysore.

***

I have just come to learn that the appeal filed by the Bank of Mysore, Ltd. against the Government in respect of the bungalows of the late Vardhamanian, has been decided in favour of the Bank by the High Court of Mysore.

In view of this final decision, the Government are no longer entitled to retain possession of the bungalows.

Incidentally, several complicated questions arise in the case. I have therefore returned to you the Cheque No.13/BK 0639 for Rs.9,071/- that had been sent to me for delivery to the District Judge of Mysore. Further action may be taken immediately , as advised by the Government.

Director of Sandalwood Oil Factory, Bangalore.

Bangalore/12.10.42.

atk-3)

2330 Pln

No. 283
Enc. 2 Files

Office of the Advocate-General
in Mysore,
Bangalore, dated the 15th Oct. 1942.

1645

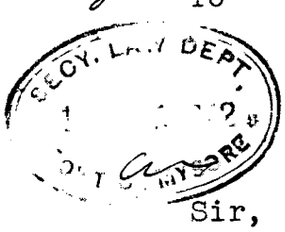
Law 255-62-1

From

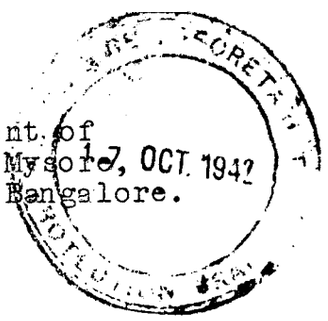
The Advocate-General
in Mysore, Bangalore.

Law

To



The Secretary to the Government of
H. H. the Maharaja of Mysore,
Law Department, Bangalore.



Sir,

With reference to Government Order No. P. 212-14/Law.156-40-2, dated the 12th July 1941, I have the honor to state that Regular Appeal No. 128 of 1940-41 on the file of the High Court of Mysore (The Bank of Mysore, Ltd., Bangalore, vs. The Government of Mysore and another), was heard on the 5th, 6th, 7th and the 8th instant, and Judgment was pronounced on the last day - allowing the appeal with costs.

2. In the course of his Judgment, the learned Chief Justice was pleased to observe that the Government could not purchase - property in sales held under Chapter XI of the Land Revenue Code and that Rule 99 (b) in that respect was invalid.

3. The marginally noted two Secretariat collections relating to the case received with your letter No. P. 2264, dated the 29th September 1942, are herewith returned.

(1) Law 149-38/Sls. 1 to 13.
(2) " 156-40/Sls. 1 and 2.

I have the honor to be,

Sir,

Your most obedient servant,

Mark Mackenzie
Advocate-General.

G. R. S. App. F. G. 3.

GENERAL AND REVEN
SECRETARIAT

(Continuation sheet draft forn

The Advocate General in
Mysore / Bangalore

Subject:— R.A. no. 128/40-41 on
the file of the High Court of Mysore
('The Bank of Mysore Ltd Vs The Govt o
Mysore and another)'

Sir

With reference to your
letter no. 283/ dated 16th October 1
on the above subject, I am dire
to request you to be so good as
obtain and forward immedia
a Copy of Judgment and memo of
in the Case as the same is present
required for reference.

I have etc.
h

P 3625 dy 6-11-42 ✓ Seen by Govt. Law Secy
Copy of the above is forwarded

~~[illegible]~~ Sandalwood Oi

~~[illegible]~~ Bangalore

~~[illegible]~~ reference to his letter

dated 15th October 1963 with a

request that necessary instructions may

immediately be issued to the

Collector General towards expedi

ting obtaining of the Judgment and

By order

3690/42
p

No. 413 — Encl: Certified copies (68 Sheets)

Office of the Advocate-General
in Mysore,
Bangalore, dated 28th November 1942

Cr 255-42-4

From

The Advocate-General
in Mysore, Bangalore.

To

The Secretary to the Government of
H. H. the Maharaja of Mysore,
Law Department, Bangalore.

SECY. LAW DEPT. GOVT OF MYSORE

Sir,

30/11/42

REV. SECRETARIAT 30 NOV. 1942 BRANCH

Re: R. A. No. 128 of 1940-41 on the file of the High Court of Mysore, (The Bank of Mysore, Limited, vs. The Government of Mysore and another).

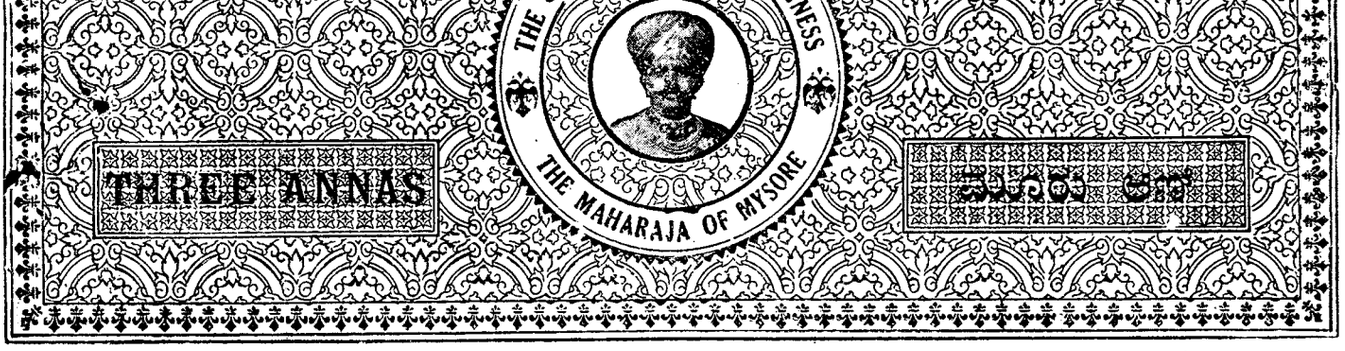
With reference to your letter No. P.3024/Law. dated the 6th November 1942 on the above subject, I have the honor to forward herewith, as desired, certified copies of the Judgment and Decree (68 sheets) passed by the High Court in the above case.

I have the honor to be,

Sir,

Your most obedient servant,

Advocate-General.



C.R.732.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Mr. C. Lakshmana Gowda
Advocate-General.

Thursday, the 8th day of October 1942.

Present

Sir D'Arcy Reilly, Chief Justice,

and

Mr. Justice S. Venkata Ranga Iyengar

Regular Appeal No.128 of 1940-1941.

The Bank of Mysore, Ltd., by its Manager, Mr. F.L. Peradon, Bangalore City.) Plaintiff ... APPELLANT.

v.

1. The Government of Mysore by the Chief Secretary to the Government of Mysore, Bangalore. - .. Defendant 1) .. RESPONDENTS
2. M. V. Veerendra Kumariah.. " 2)

Regular Appeal against the decree dated 30th November 1940 of the District Judge of Mysore in Original Suit No.2 of 1939-40.

This appeal coming on for final hearing this day, the court----

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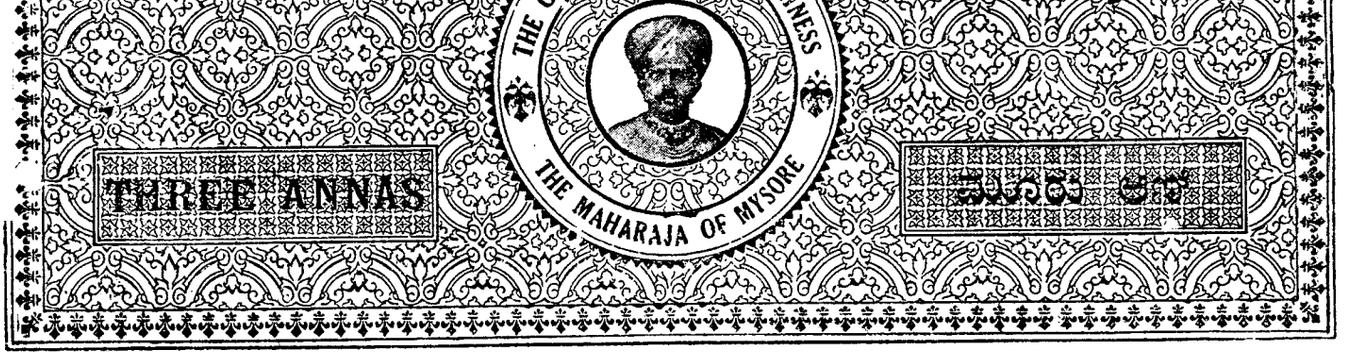

Court delivered the following :-

J U D G M E N T S.

THE CHIEF JUSTICE :-

In Original Suit No.28 of 1930-31 on the file of th Bangalore District Court the Government sued to recover a very large amount, something over eight lakhs of rupees, from one Vardhamaniah and others. Their claim against Vardhamaniah was settled by a compromise with his legal - representatives after his death to the effect that they should pay Rs.20,000/- to the Government, for Rs.6,000/- of which they made a mortgage over two houses in Mysore i favour of the Government under Exhibit VI, dated the 6th of March 1933, which purported to give the Government as mortgagee a right of sale and also a right to recover the amount, if not paid within time, as if it were an arrear of-

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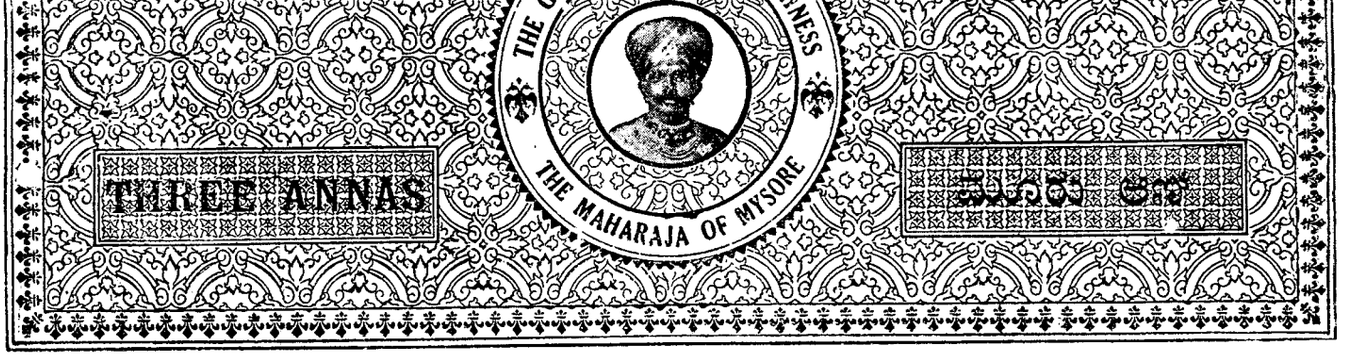

of land revenue under the provisions of Section 193 of the Land Revenue Code. As the 6,000/- rupees were not paid to the Government within the time fixed, the two houses were put up for sale in auction by the Government under the Land Revenue Code on the 4th of March 1936, and according to the record of the auction proceedings they were sold to the only bidder at the auction, the Officer in charge of the Government Sandalwood Oil Factory in his official capacity as an Officer of Government, for Rs.6,000/-; and after some proceedings the Government got possession of both the houses. On the 10th of July 1936 Kantamma, the third wife and widow of Vardhamaniah, preferred a petition to the Government praying that the sale might be cancelled or in the alternative that she might be allowed to buy the two houses from the Government for Rs.6,000/-; and to that alternative prayer the

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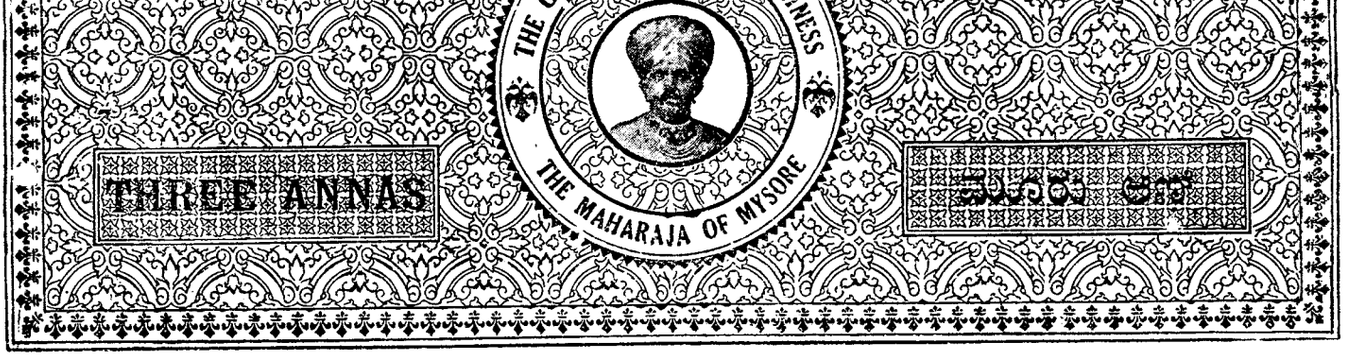

the Government agreed, after which Kantamma paid the 6,000/ rupees to the Government. It has been explained to us that, although all that happened in 1936, no sale-deed in favour of Kantamma has yet been executed, because there has been a dispute between her and the Government whether the intention was that the houses should be sold to her for her own benefit or for the benefit of the members of Vardhamaniah's family including his three sons.

In original Suit No.25 of 1928-29 on the file of the Mysore District Court the Bank of Mysore got a decree for very large amount against Vardhamaniah and others on a - mortgage. The Bank realized the value of the mortgaged property and then applied to the District Court for a personal decree against Vardhamaniah's estate; and, while that application for a personal decree was pending, the Bank got the-

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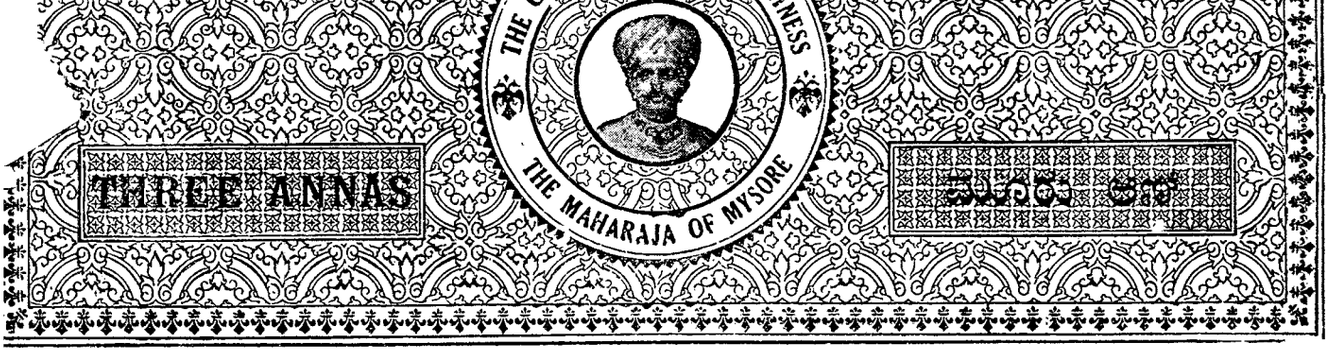

the two houses I have mentioned attached on the 2nd of May 1933. A personal decree was made in favour of the Bank - against Vardhamaniah's estate; and after curiously prolonged execution proceedings, in which two unsuccessful attempts were made to bring those two in execution, they were bought in execution by the Bank on the 7th of July 1936, subject of course to the mortgage in favour of the Government under Exhibit VI, for Rs.16,608/-. The Bank got possession of one of the houses, Item 1 in this suit, but failed to get possession of the other; and as the result of two - applications, which were made to the Court under Rule 97 of Order XXI of the Code of Civil Procedure by the Bank and the Government respectively, the Government got possession - eventually of both the houses. In the present suit, which was brought in August 1939, the Bank has sued to redeem the mortgage.....

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mortgage for Rs.6,000/-, on which ~~xx~~ no interest is due - according to the terms of Exhibit VI. But in the plaint curiously enough, the Bank included an alternative prayer that the Government should be ordered to pay to the Bank - Rs.19,691/-, i.e., the 16,608/- rupees, which the Bank had paid for its Court-purchase, plus interest on that amount. Nobody has been able to explain to us why it was ever thought that that amount of Rs.19,691/- was to be recovered from th Government ; and it appears from the record that that alte native prayer was not pressed in the District Court. Oddly enough, by some mistake it was repeated in the appeal Memo- randum in this Court; but Mr. Lakshminarayana Rao, who appears for the Bank, had dropped it. In the District Court, where the suit was tried, it was dismissed; and the present appeal has been brought by the Bank against that dismissal.

Some-----

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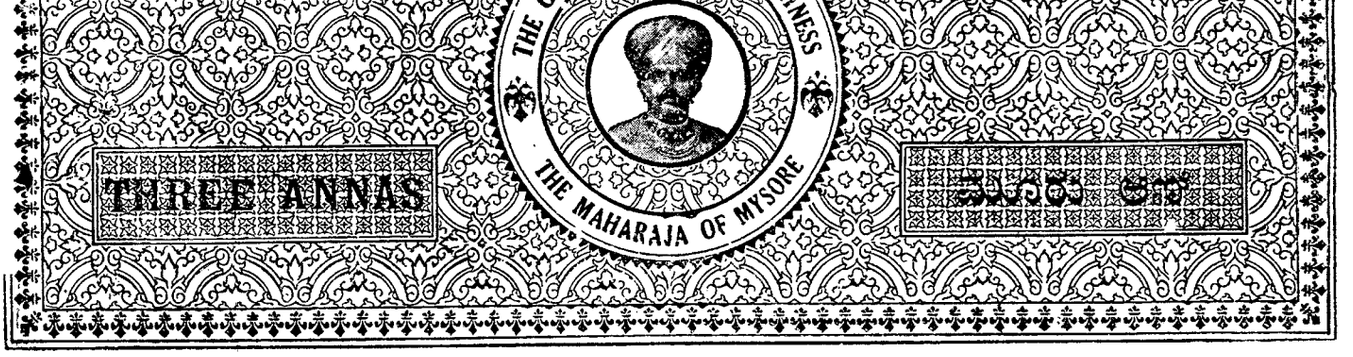

Some very strange proceedings are disclosed in this litigation. In the mortgage-deed, Exhibit VI, which the Government took from Vardhamaniah's sons in 1933, the value of the two houses, with which we are concerned, was shown as Rs.45,000/-. When they were attached at the instance of the Bank in the same year, the record shows that the Panchayatdars present at the time of the attachment estimated their value at something over Rs.21,000/-. The Bank as I have mentioned, took them in satisfaction of their claim of Rs.16,608/- subject to the mortgage of Rs.6,000/-, which would represent the value as considerably more than Rs.22,000/-. But, when the Government held their auction in March 1936 a Government Officer bid for the Government only Rs.6,000/ and according to the tenor of those auction proceedings and the contention of the Government in this case he bought both ----

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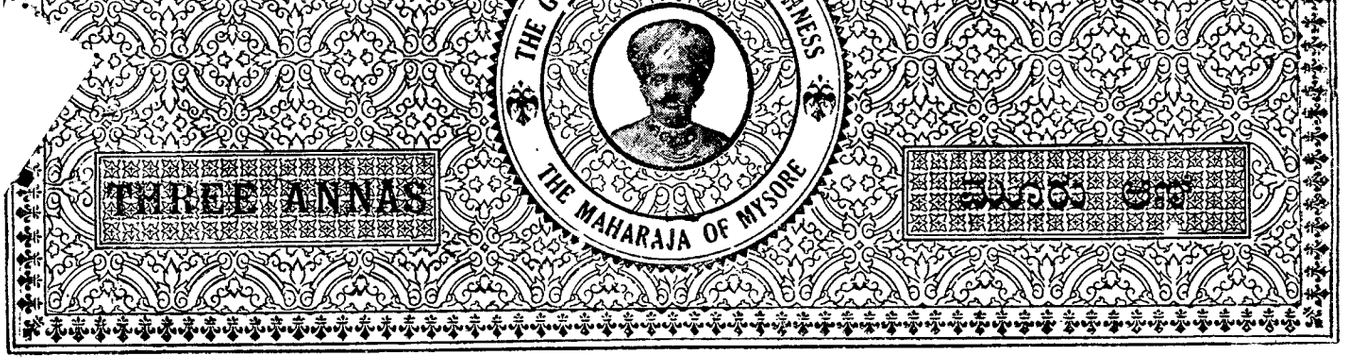

both the houses for that amount for the Government free of any encumbrance. That very officer has been examined as a witness in the case, and he estimates the value of the hous at the time at Rs.18,000/-. We need not suppose that he w putting forward any very exaggerated estimate. It is indisputable therefore that the amount, for which the two houses were knocked down to the Government at the revenue sa represented only a fraction of their real value.

I have mentioned two suits, in which there were very large claims against Vardhamaniah and after his death again his estate. And it is admitted before us that, after bein a very prominent business-man in Mysore and a very wealthy man, he died very deep in debt, as there is no doubt every educated man in Mysore was well-aware. In those circumstances according to the tenor of the auction proceedings, which were followed-----

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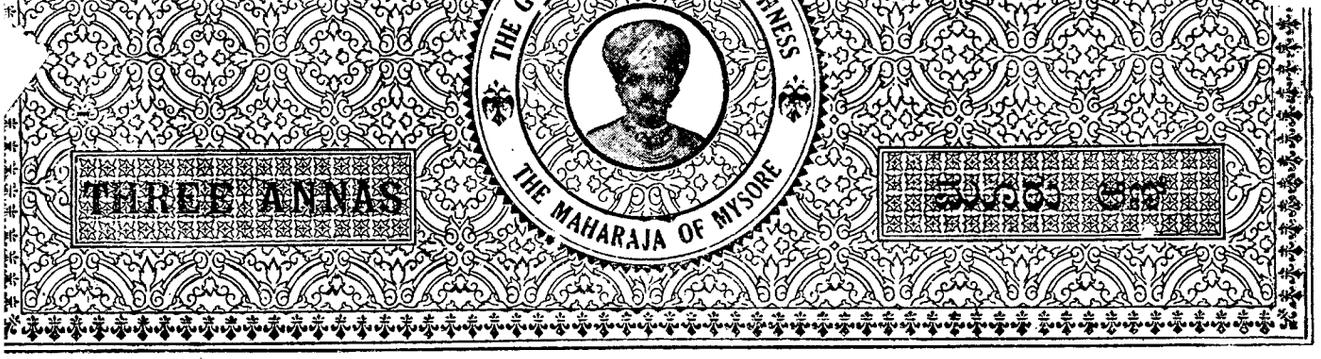

followed by a sale certificate issued by the Deputy Commissioner in favour of the Officer in Charge of the Sandal Wood Oil Factory, the Government bought the two houses of Vardhamaniah for a fraction of their value, as their officers knew at the time of the purchase, when, as must have been weel-known, Vardhamaniah's estate was deep in debt. And after that purchase -- an effective purchase as is represented for the Government in this case -- the Government agreed to sell the two houses for the small sum of Rs.6,000/-, for which they had been knocked down to the Government at the revenue auction, to Kantamma, as she represents, for herself and, as the Government represent, for the benefit of Vardhamaniah's family. If that was the effect of what was being done, then it will be seen that a large part of Vardhamaniah's property has been screened from Vardhamanian's creditors

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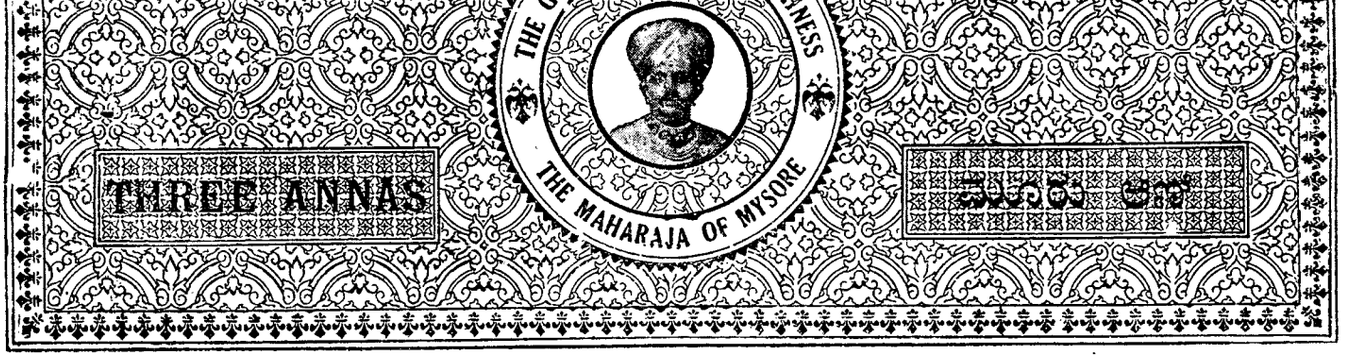
reditors, who have been defeated by the proceedings, and as been put safely back in the enjoyment of Vardhamaniah' amily. Stated like that those proceedings appear to me They have such a strong smell of raud that, if we were dealing with private parties, betwe hom such transactions were disclosed, it would be our dut o approach them with the gravest suspicion and to scrutin hem with the greatest care before we recognized that ther as any validity in them at all. The learned Advocate- eneral has assured us that, although the Government after what hey represent as their purchase at the Court-sale of the wo houses, for Rs.6,000/- agreed to sell them to Kantamm or that amount, leaving her or the family, who ever woul n effect be the vendeed to enjoy the remainder of the value of the property, they did that out of a generous desire to help



help the members of Vardhamaniah's family after his almos
pitiable financial disasters and did it without any knowl
that by so doing they were defeating any of Vardhamaniah
creditors. I am quite prepared to accept that assuranc
I think we may take it as quite probable that neither t
member of the Government concerned, who sanctioned that
proceeding, nor the officers of the Secretariat were aw
that, if the proceeding went through, Vardhamaniah's cr
would be put to most unjust loss. But I find it very
to believe that the local Revenue Officers in Mysore, w
were concerned in this sale, were equally unaware of wh
was going on and what would be the result of the transa
The Revenue ~~sale~~ auction was conducted by a Sub Divisional
Officer, who under the Land Revenue Code had been empowe
to exercise the functions of a Deputy Commissioner, and the
Sale-----

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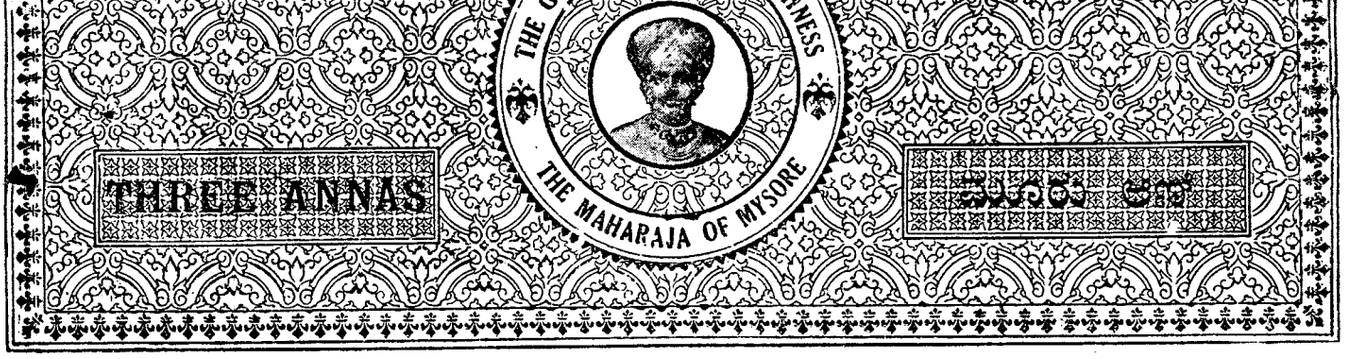

Sale Certificate was issued by the Deputy Commissioner. The purchaser was a local Government Officer in charge of the Sandalwood Oil Factory at Mysore. As the learned - Advocate General has admitted, there is no reason whatever to suppose that they were unaware that Vardhamaniah had suffered great financial dissasters and that his estate w deep in debt. No one on the facts I have mentioned cou believe that those Government Officers were in any doubt whatever that the purchase-price, which according to the tenor of the auction proceedings was the Government's bid of Rs.6,000/-, was very much less than the value of the property. And it must be mentioned that the auction was held very improperly by adjournment at a place other than that at which it was notified to be held, which may well

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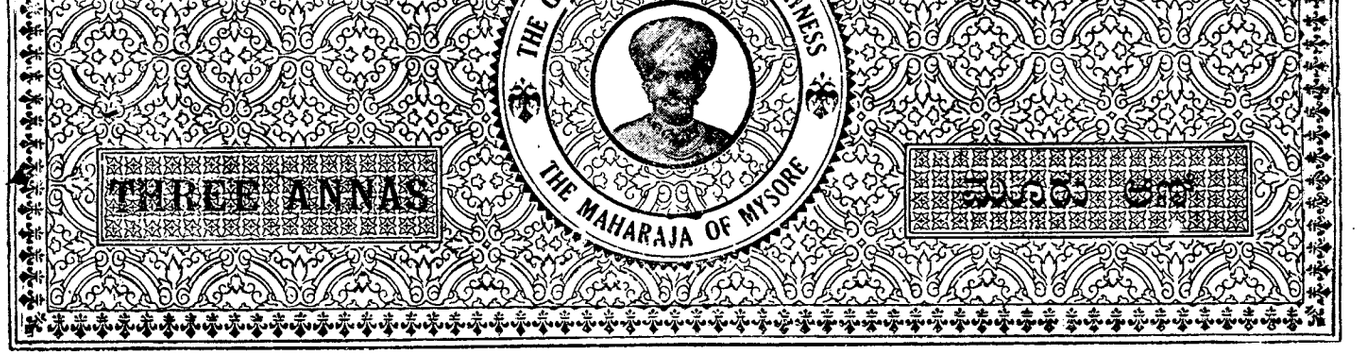
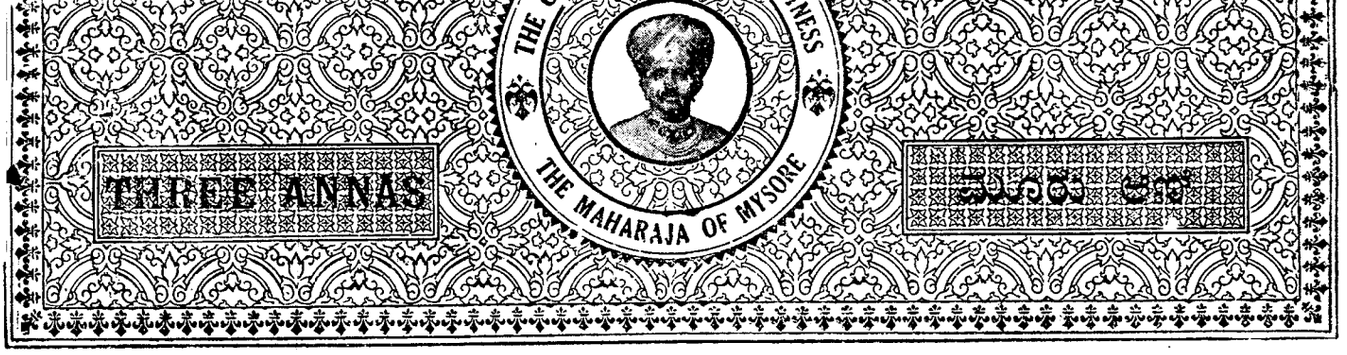
her petition to the Government, as the record before us shows, through the local officers. It is extraordinary I think, if the Government were not warned by the Officers, who knew the facts, that to agree to the proposal to sell the houses to her for Rs.6,000/- would be grossly unjust t Vardhamaniah's creditors. It has been disputed before u whether those local Revenue Officers were aware that the Bank of Mysore, which had a large decree against Vardhaman estate, had been attempting for years to realize the balan of that decree by the sale of these two houses. No one c deny that Vardhamaniah's family were well-aware of the thr attempts to sell these houses by Court-auction and all th proceedings during which the sales were put off from time to time. And I find it very difficult to believe that th local Revenue Officers, when they set about selling



these houses for what was due to the Government under the procedure of the Land Revenue Code. never came to know of those execution proceedings. It is difficult to suppose that the Government Officers could shut their eyes to noto facts or what one would expect to be notorious facts in a City of comparatively small size as Mysore. Now it will be remembered that Kantamma in her petition of 10th July which I have mentioned, prayed that the sale should be c celled or that she should be allowed to buy the propert if the sale had been cancelled, no harm whatever would h been done either to the Government or to Vardhamaniah's -ditors. The Bank of Mysore was willing, as there can no doubt, to pay off the 6,000/- rupees. which were all Government wanted to get out of the houses; and they co have done that, had the sale been cancelled. How it ca ab



about that Kantamma's alternative proposal that she should be allowed to buy the houses for 6,000/- rupees and put the out of the reach of Vardhamaniah's creditors reached the - Government without the character of that alternative propos being pointed out I do not understand. At the very best I think we must regard this as a case in which the local - Government Officers concerned in Mysore did not think what they were doing and did not attempt to see its obvious resu One very unfortunate result is that the Government have bee put in the unpleasent and invidious position of being gene with somebody else's money. I may mention that, although we are told that Kantamma's representation is still anxiou to enforce her agreement with the Government about the purc of these houses, Vardhamaniah's eldest son, Sanathkumariah as Exhibits XX, XXI and IV in this case show, in 1936 brou the

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he facts to the knowledge of Government Officers and at hat stage at any rate was dissociating himself from any dea of attempting to defeat the Bank's claims. The Go ent is Defendant 1 in this suit. As I have said, I ntirely accept the Advocate-General's assurance that th overnment did not realize what they were doing and were ware of the facts when they agreed to sell these two ho to Kantamma. But I find it very difficult to understan why, when this suit was brought and the whole facts were laid bare, the Government thought it proper to defend the suit. The Government are clearly not anxious to get mor than their 6,000/- rupees out of these houses. By defen -ding this suit, even if they got the 6,000/- rupees othe wise than from the Bank, they could hardly fail to get di credit also from the transection. Kantamma is now dead, and

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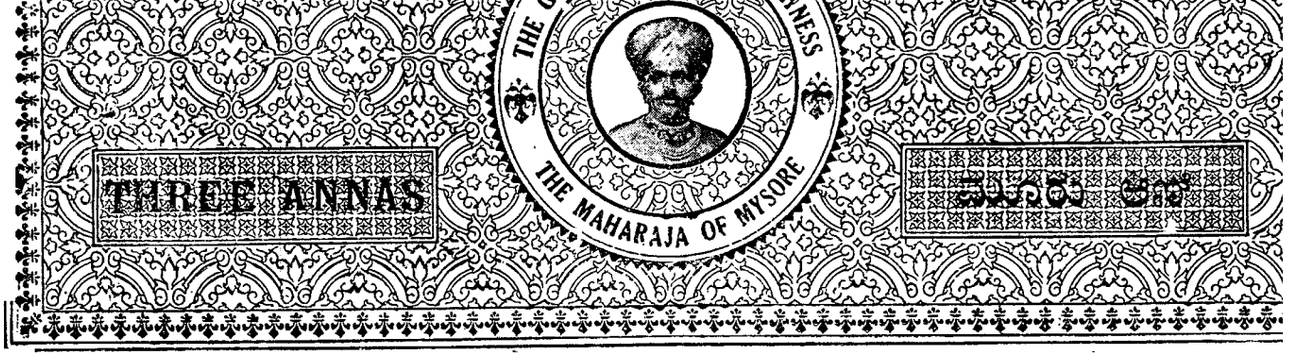
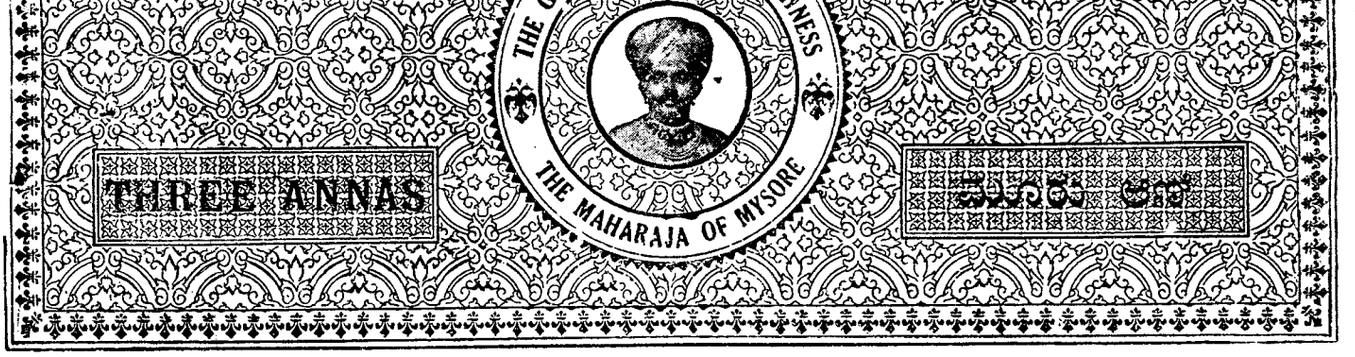
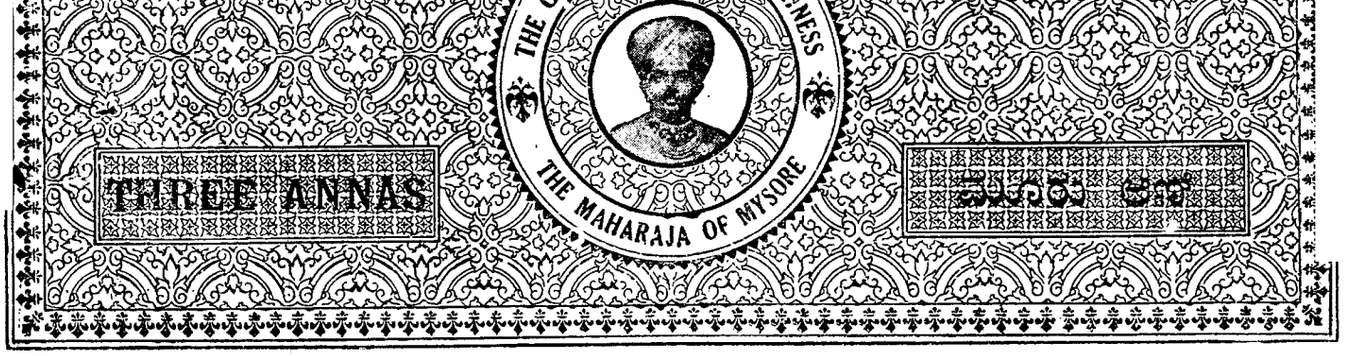


and it is her son and legal representative who is Defendant 3 in the suit. It is more intelligible, as we cannot attribute anything serious to him because he is still a minor, that the suit should be contested on his behalf in order that he may get some benefit out of the agreement with the Government, if possible

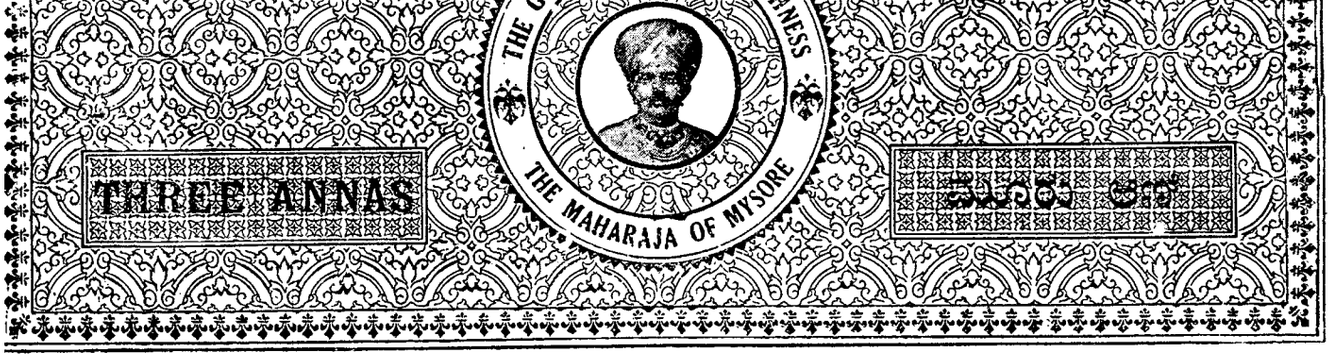
However, quite apart from their moral position in this litigation, the Government have taken up the attitude that legally they got a valid title to these two houses as owner by purchasing them at the Revenue auction in March 1936 and that title they can pass on to Kantamma or to members of Vardhamaniah's family, and they intend to do so in spite of the Bank's claim to redeem the property and get what is due to the Bank ~~ex~~ out of the margin of the value of the property over the 6,000/- rupees of the mortgage amount. I have mentio



mentioned that in Exhibit VI it is provided that the Gover ment shall have a right of sale, as some mortgagees can have under the law as it stands elsewhere than in Mysore. We need not consider the question on this occasion whether any mortgagee can have such a right in Mysore, because the position of the Government is that they have no wish to enforce that provision in the mortgage-deed, Exhibit VI. Their case is that they have proceeded, as they were entit to proceed, under the other provision of the mortgage-deed I have mentioned, viz., that they could realize the 6,000/ rupees when due under the provisions of Section 193 of the Land Revenue Code as if it were an arrear of land revenue I will read the provisions of that section of the Land - Revenue Code. It runs:- "All sums due on account of th land revenue, all quit-rents and forfeitures, and all ces



profits from land, emoluments, fees, charges, penalties, fines, costs and interest payable or leviable under this - Regulation or under any Act, rule or order hereby repealed or under any Act or Regulation for the time being in force relating to the Land Revenue" (and then come words added b the amendment of 1905) " and all monies falling due to Gov ment under any grant, lease, security bond, or contract - which provides that they shall be recoverable as a revenue demand or arrear of land revenue " (There the amendments e and the section goes on) "and all monies due by any contra for the farm of customs duties, or of any other duty or ta or of any other item of revenue whatsoever, and all specif pecuniary penalties, to which any such contractor renders himself liable under the terms of his agreement; and all sums due from a tenant in an alienated village as contribu



contribution in respect of any irrigation work, under a contract which provides that they shall be recoverable as arrears of land revenue; and also all sums declared by this Regulation or by any other law at the time being in force to be leviable as assessment, or as a revenue demand or as an arrear of land revenue; shall be levied under the foregoing provisions of this Chapter. And in the event of resumption of anysuch farm as is aforesaid, no person shall be entitled to credit for any payment which he may have made to the contractor in anticipation". The Chapter there referred to is Chapter XI of the Land Revenue Code. That is the provision under which according to the case for the Defendants the Government bought these two houses at the revenue sale in March 1936.

Mr. Lakshminarayana Rao for the Bank has urged before

us that the Government did not buy the houses and could no buy the houses under that provision. He starts with a - simple and obvious proposition, that no man can sit on two sides of the same table at once and sell property to himse He represents that under Section 193 of the Land Revenue Code it is the Government which sells in an auction-sale held in accordance with the provisions of that section, a herefore the Government cannot be the buyer at that aucti ither under their own name or under the name of any Gover nt Officer acting for them. He has pointed out to us n Chapter XI of the Land Revenue Code there is no expli rovision that in such proceedings the Government, althc elling the property, may in any circumstances be deeme e the vendee or may acquire the property as if they wer the vendee. In the absence of any such provisions he

1925 Lahore case

Sankara Iyer's letters asking
some properties to be omitted

Reasons why other items were
not included.

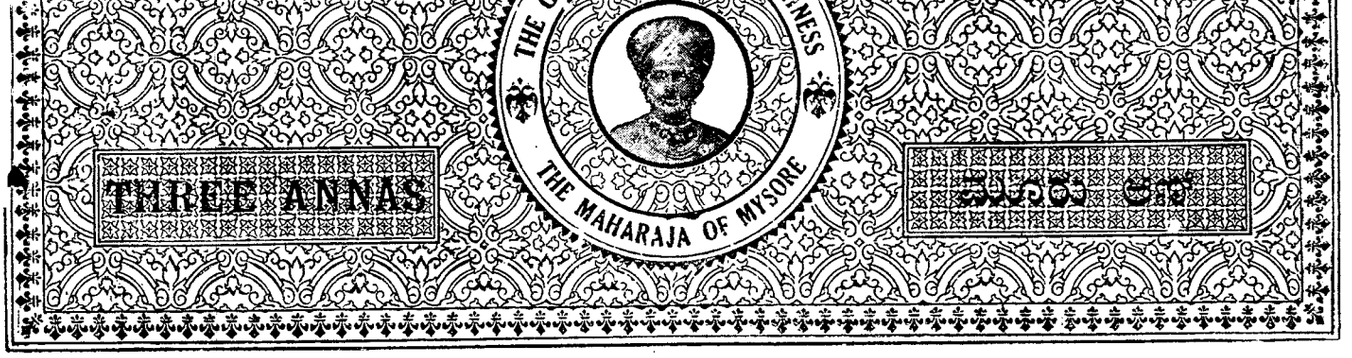
Inclusion of dividend } are significant
to add hoc profit }

Admitted facts preclude the possibility
of suppression

Statute to Court mentions actual
Court fee paid

A copy of this is given to Lakshmi

Appln to Court on manner
of 6 months after end year
having another Statute
re Sale proceeds of "this



that the proposition that no man can sell to himself is u
answerable. His case therefore is that what happened -
according to the record of the proceedings at the auction
sale held by the Revenue Officers in March 1936 means nothing:
the Officer in charge of the Sandalwood Oil Factory could
not and did not buy the property for the Government, and
the Government did not become the vendee: and the fact that
the Deputy Commissioner issued a sale certificate in favour
of the Officer in Charge of the Sandalwood Oil Factory -
means nothing. The learned Advocate-General has not -
attempted of course to contest the plain proposition that
a man cannot sell property to himself. What he has attempted
to do is to persuade us that it was not the Government which
was in the position of seller at the auction held in March
1936. He has read to us the various relevant provisions

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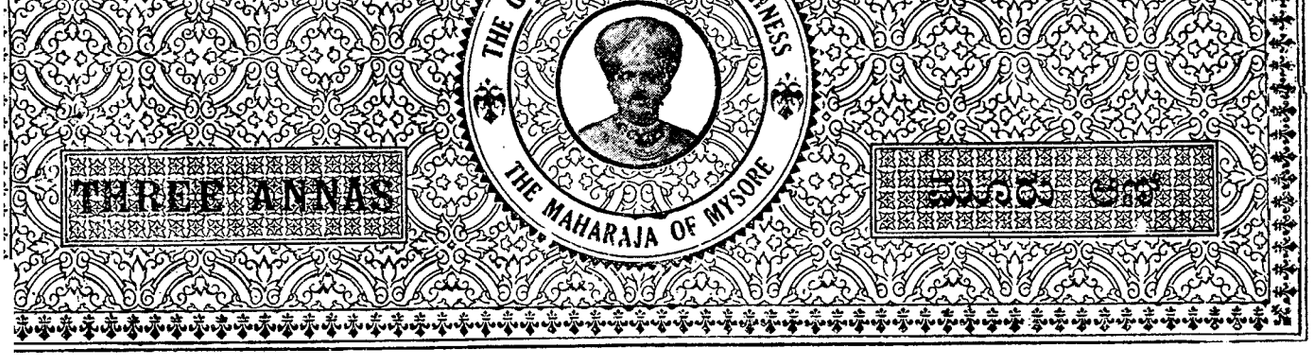
of Chapter XI of the Land Revenue Code. Although that Code deals with a large number of matters, in this case we are concerned practically with nothing more than Chapter XI of the Code and various other provisions in the Code which have a bearing on those provisions. The learned Advocate-General's reading of Chapter XI of the Land Revenue Code, which he has asked us to adopt, is that it sets up something like Revenue Courts, which operate under the provisions of that chapter to recover for the Government arrears of Land revenue and other sums due to the Government, which may be recoverable by virtue of Section 193 of the Code under the provisions of that chapter, that we must regard the Deputy Commissioner as having the authority set out in that chap for exercising various functions for recovering dues and selling property and so on (though other officers may be



empowered to exercise the functions of a Deputy Commissio
as it appears a Sub Divisional Officer was in this case)
if ~~xxxxxx~~ he were in the position of a Revenue Court and
that the Government, when recovering what is due under th
provisions of that chapter, are in the position of a part
appearing before that Revenue Court, and therefore there
nothing unreasonable in the Government being able to bid
a party at a sale held under that chapter and so to becom
the purchaser of the property sold, as a decree-holder ca
with proper permission bid at an auction held in executio
of his decree in a civil court. If the reading of Chap
XI, which the learned Advocate-General has urged us to
adopt, were correct, then the position would not be, as
Lakshminaravana Rao has represented to us, that in this

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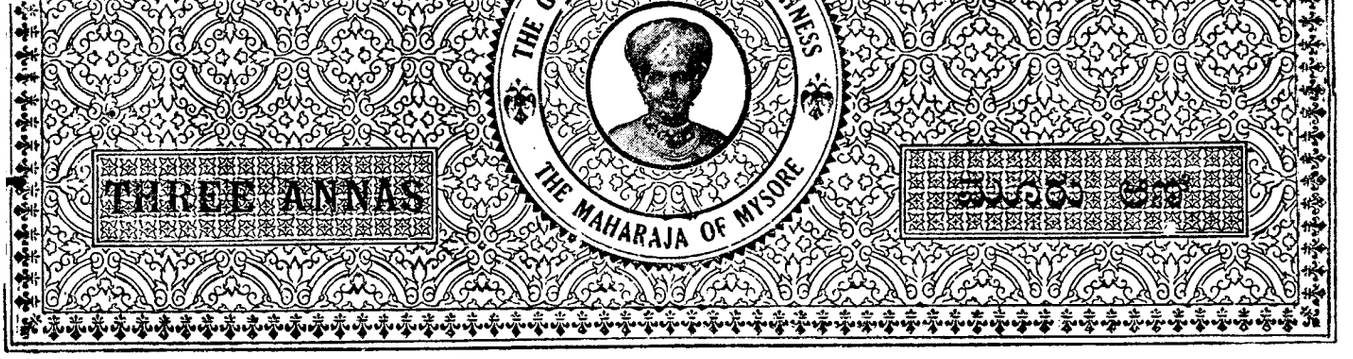
property for themselves. According to the learned Advocate-General the position would be that the Government had boug the property from the Revenue Court, which had the same power as a civil court holding a sale in execution to give a good title to the party or to any one else who was declared to be the purchaser at the Court-sale. I find i very difficult to read Chapter XI of the Land Revenue Code as the learned Advocate General suggests. Indeed I think we cannot accept his suggestion. There is nothing, so fa as I can see, in the provisions of Chapter XI of the Land Revenue Code to indicate that the Deputy Commissioner is set up as a Revenue Court independent fr[illegible] for the main purpose of the provisions of that chapter which are the recovery of land revenue due to the Governme I think the proper way to approach that chapter in order



get at its meaning is to remember that it has been enacted primarily to give the Government means of recovering land revenue due to the Government. It is only by a very late provision in the chapter, Section 193, that the Legislature has allowed the machinery of the chapter to be used for other purposes than the collection of land revenue, v: the collection of other dues to the Government and by the words of the amendment made in 1905, to which I have drawn attention, other amounts due to the Government in regard t matters which have nothing to do with land revenue at all or with taxation of any kind. Now, when we look at the machinery set up by Chapter XI of the Code for the purpos of enabling the Government to recover arrears of land revenue. I do not think it is possible to find any indication that the intention of the Legislature was to establish a Court, before-----

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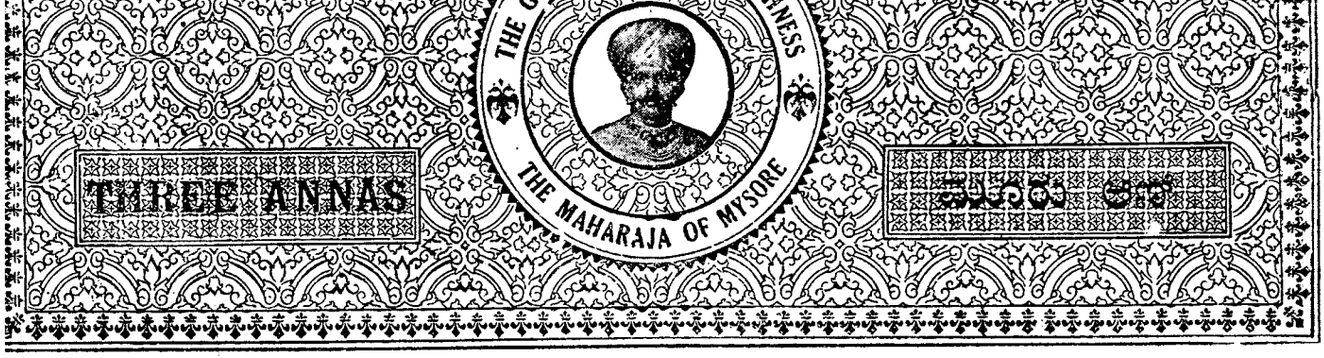

before which the Government should appear, as a party, as the learned Advocate-General has suggested. There is no provision in that long chapter for any application being made by the Government to this supposed Court in order to put it in motion, though there are provisions for other person affected by the proceeding to make applications to the Deputy Commissioner in regard to what he has done or proposes to do. There is no provision in that chapter for the trial of any question between the Government and the defaulter in regard to the amount of revenue to be recovered. There is no provision for the Government giving evidence as a plaintiff or an applicant in any Court which would have to do to prove the truth of his claim, if it is disputed. There is no provision for this supposed Court pronouncing judgment between the two parties. There is no provision for this supposed Court dismissing the Government claim

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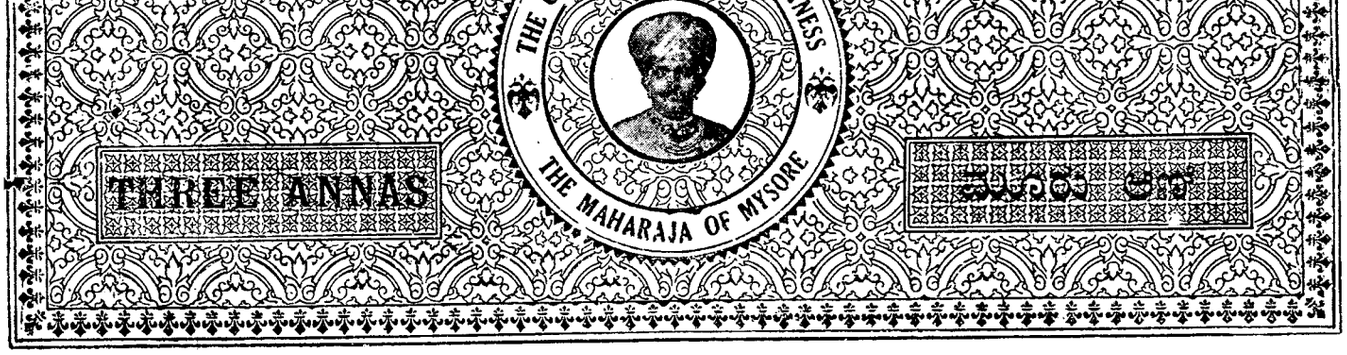
THE MAHARAJA OF MYSORE

claim. There is ~~no~~ provision for the costs of the proceed-
al
ings being debited to the defaulter, from whom the Government
wished to recover what is due; but there is no provision
for any one getting costs out of the Government, if their
case before the supposed Courts turns out to be wrong.
There is in a following chapter an elaborate procedure f
appeals. There can be an appeal by the defaulter or b
any persons, who feels himself aggreived, from the offi
exercising the powers of a Deputy Commissioner, if he i
not the Deputy Commissioner, to the Deputy Commissioner
the Deputy Commissioner to the Revenue Commissioner and
from the Revenue Commissioner to the ultimate authority.
And it is very remarkable where that ultimate authority i
to be found. The ultimate appellate authority is the -
Government That is this extra-ordinary Court, which th
learned



learned Advocate General asks us to suppose has been brought into existence, is subject ultimately to appeal from its decision to one of the parties before it. I think it is hardly necessary to elaborate this question further. But I may mention that there are provisions in the chapter for notices being given by the Deputy Commissioner to the defa against whom he proposes to take action. There is no provision anywhere for any applicant or any appellant con with these proceedings ever giving notice or anybody givi notice on his behalf to the Government as if the Governme were the party opposed to him. The obvious implication that is that, when an applicant raises any objection to w is going on or when an appellant raises any objection to what has been done by the officers concerned, he prays th

THE MAHARAJA OF MYSORE
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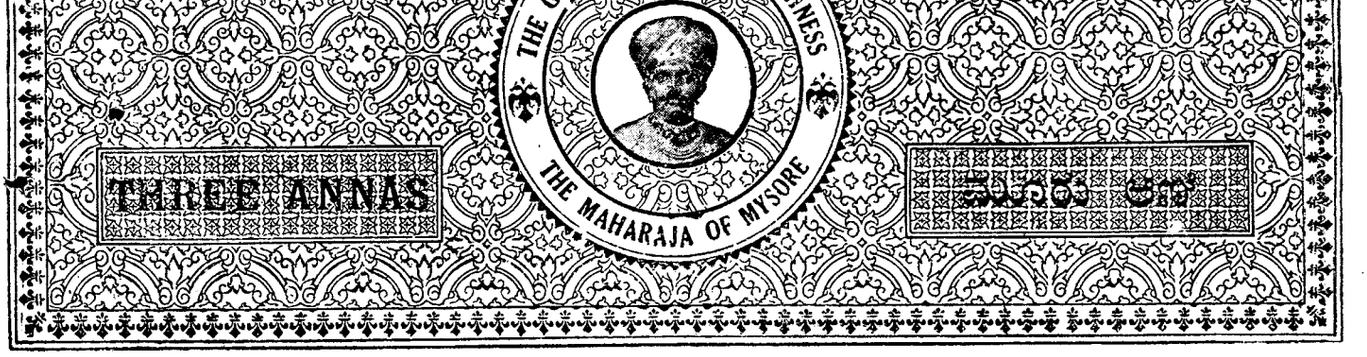
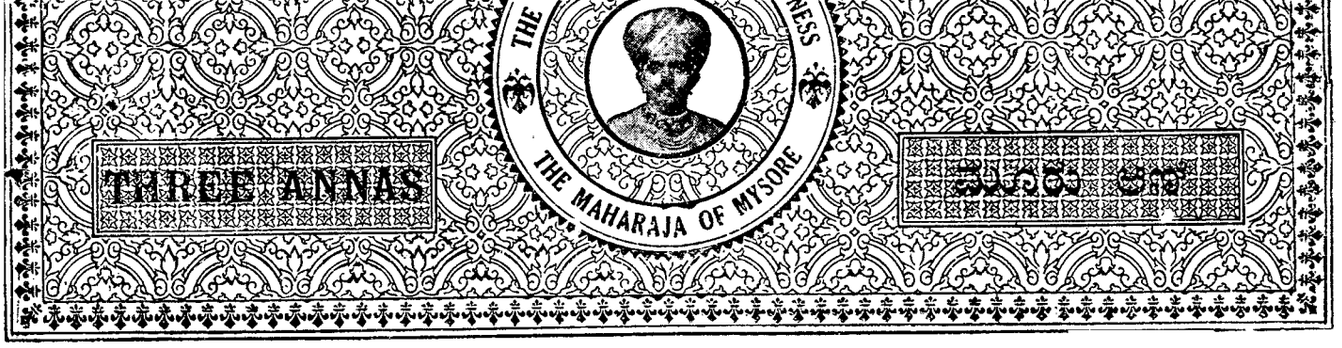
overnment officer concerned, who according to him has - exercised his executive functions improperly or unnecessarily. I do not think we can find any trace of this supposed Cour in Chapter XI of the Land Revenue Code. I do not think the Government can escape from the difficulty, which has been represented by Mr. Lakshminarayana Rao, in that way, by persuading us in this case that they did not buy the prope from themselves according to the purport of the proceeding but they bought it from some Revenue Court, which had powe to give them a good title. If we look at this chapter of the Code, so far as it refers to arrears of land reven we find that those arrears are statutorily charged upon t land on which the revenue is assessed; i.e. the Governme is in the position of a mortgagee in regard to any arrear of land revenue. The provisions in Chapter XI give the executiv

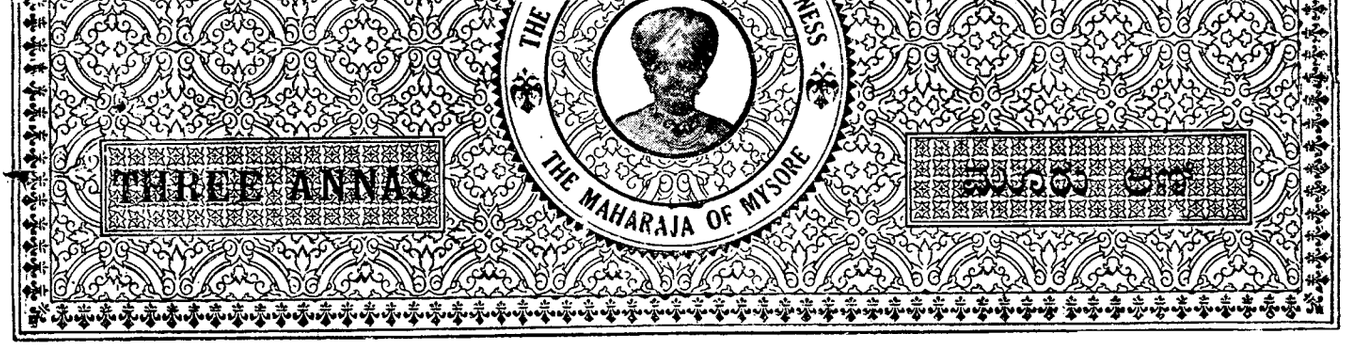


executive Government power to recover those arrears by sale of the land or otherwise. The code very properly regulates the proceedings of the executive officers concerned in recovering arrears under its provisions and provides for appeals from the Subordinate authority to a superior authority, not leaving the whole matter in the hands of one executive officer unchecked. All those are excellent provisions. But they appear to me to be provisions regulating the exercise of executive authority by Government officers. And, when we remember that the land revenue is charged upon the land concerned in the way I have mentioned, then the code indicates, I think that the Government is to be practically in the same position as a mortgagee, who has a right of sale, when the Government through the Deputy Commissioner decide to exercise their right to recover arrears of land revenue by sale.



That appears to me to be the principle of the matter, so far as the provisions of the chapter apply to the recovery of arrears of land revenue; and we must remember that that is the primary object of the chapter.

When the machinery for carrying out that purpose ha been extended to the collection of other amounts due to t Government, it appears to me that it is still the Governm and not a Court which has special powers under this chapte to recover what is due to the Government by this machinery It happens that in some cases the Government are empowered to use this machinery for recovering what is due to other bodies. Under the Co-operative Societies Act the Govern- ment may collect for a co-operative Society what is due or



decrees in favour of the Society by the procedure of Chap XI of the Land Revenue Code. That is an addition to the Code, a further use of the machinery of the Code added af the Code was first designed. When the Government are a under such provisions to recover what is due to a co-op Society or to some other body than the Government thems then it may well be represented I think that there are two parties before the Government -- the party to whom the debt is due and the debtor. Now it is interesting to notice that provision has quite reasonably been made by an amendment of the Code to allow such a party or Society, which has appealed to the Government to recover what is due to it under the - provisions of the Land Revenue Code, when an auction is held-

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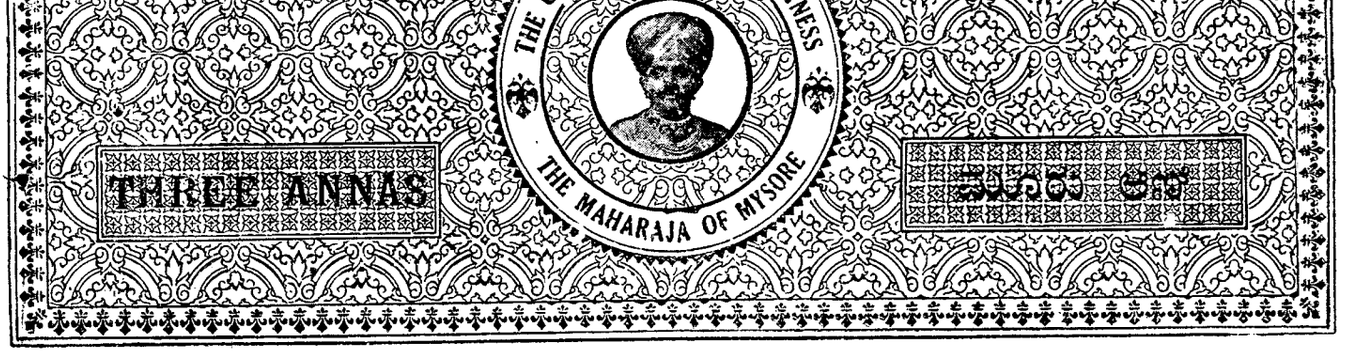

held under Chapter XI of the Code, to obtain from the Deputy Commissioner permission to bid at the auction and so become the purchaser of the property put up for sale as if the ~~l~~ proceedings were those of a Court-auction held by a Civil Court. That has been done by an amendment brought in a Section 180 of A of the Code in Chapter XI. It runs:-

" Notwithstanding anything contained in Sections 179 and 180, the party entitled to the payment of the money for the recovery of which a sale of immoveable property is held h may apply to the Deputy Commissioner forpermission to purchase such property, which may be granted subject to such rules as may be prescribed by the Government in this behalf, and where a party purchases with such permission, the purchase-

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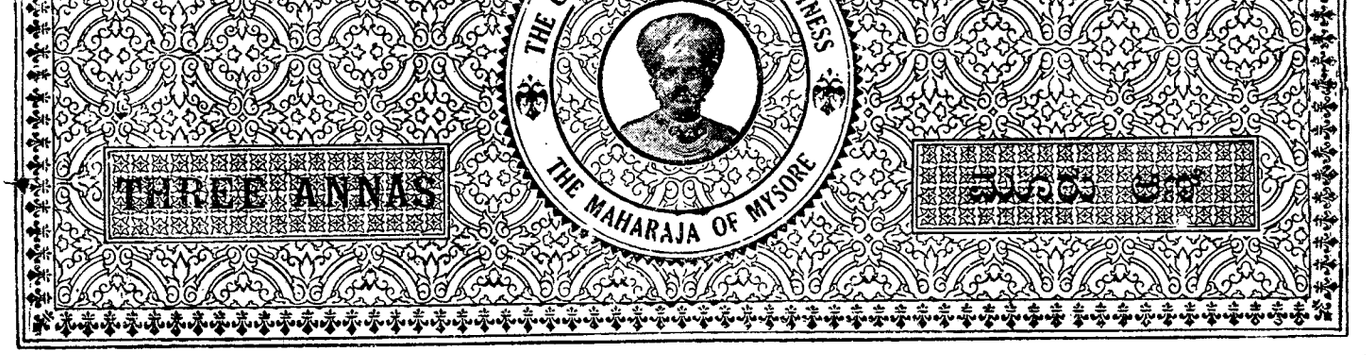

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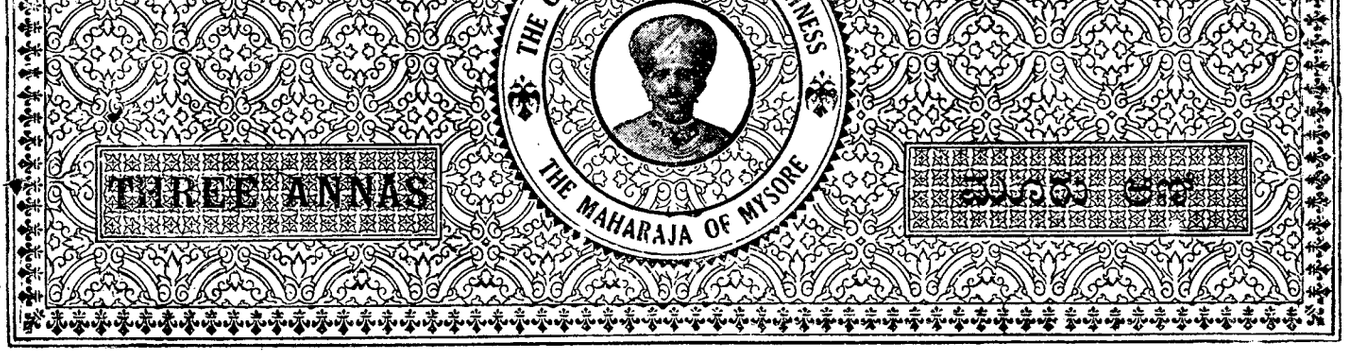
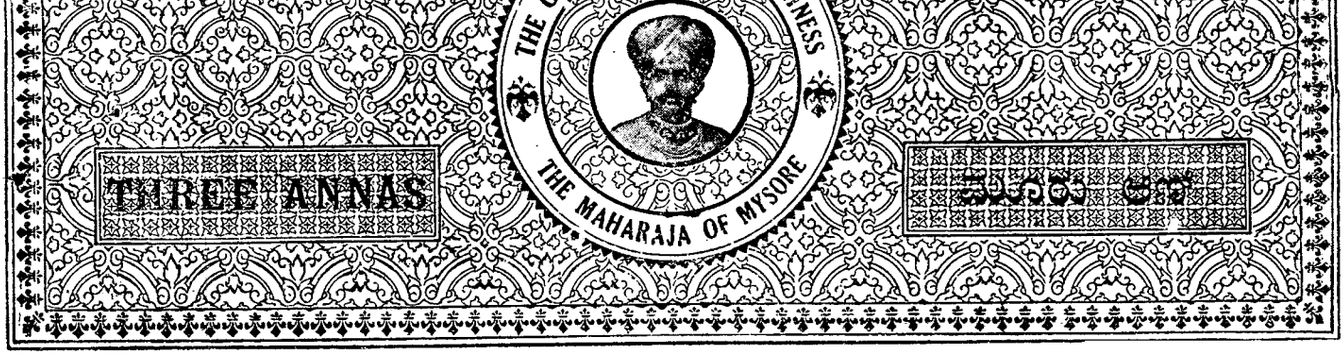
purchase-money due by him and the amount for the recovery of which the sale is held may be set off against one another". That amendment was made in 1936 after the revenue sale wi which we are concerned in this case. Until that amendme was made there was the inconvenience that, even if the Go ment were using the machinery of this chapter to recover whatwas due to a co-operative Society or some body like th the dues to which could be recovered by this machinery, th was nothing in the Code at all about allowing such a party to bid at the auction and set off the bid against the amou to be recovered as a decree-holder can do with permission a civil Court auction. Until that time Sections 179 and 180, which are mentioned in the new Section introduced by-

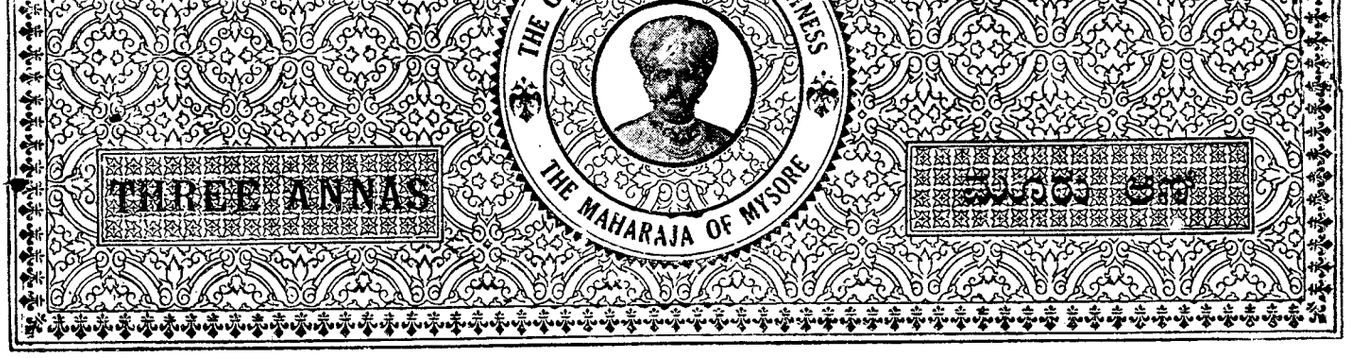


by this amendment, regulated all revenue sales. Section 179 provides " In all cases of sale of immoveable propert the party who is declared to be the purchaser shall be re to deposit immediately 25 per centum on the amount of his bid, and, in default of such deposit, the property shall forthwith be again put up and sold." Now that applied - when the Government was holding the sale in order to reco what was due to themselves. Nobody can suppose that the Legislature intended that in those cases, if the Governme intended to recover say Rupees 100/-, they would then be required to produce Rupees 25/- to be paid to themselves from one pocket to another. That would be introducing a most absurd procedure. Section 179 indicates that the -



the purchaser must always be somebody else than the Gover
ment. But, when the Government were recovering what was
due to other bodies such as co-operative Societies, then
it would be awkward that there should be no provision a
that Section 179 should always apply; and therefore th
new Section, 180 A, was introduced. The fact that tha
Section has been introduced toapply to cases where the
Government is recovering for some body other than thems
emphasises I think that there is no indication in Chapt
XI of the Code, as it stood in 1936, until after the sa
with which we are concerned was held, that it was ever
contemplated by the Legislature that the Government the

For Defendant 2, the legal representative of Kantamm Mr. Somasekhara Rao has not pressed the more extreme suggestion of the learned Advocate-General that we should regard the Deputy Commissioner, the Officer who under Chapter XI has to take action in all these matters, as a Revenue Court or indeed a Court of any kind. He has suggested to us a modified interpretation of the Code to the effect that the Deputy Commissioner, though not in the position of a Court, is, when he is acting under the provisions of Chapter XI of the Land Revenue Code, holding a sale or otherwise, part of some machinery, which has been set up and which we must regard as quite different from,



if not independent of, the Government, so that, when he sells property under the provisions of that chapter, he is not representing the Government and selling the property as a representative of the Government but is an outside authority, and therefore there is no legal objection to h' selling to the Government in the capacity of an outside authority. It is a little difficult to work out that ther quite apart from the provisions of Chapter XI of the Land Revenue code; and, when we scrutinize that chapter, I think it is impossible to work out the theory. We have to remember that that chapter provides machinery primaril for the recovery of arrears of land revenue; and to recov

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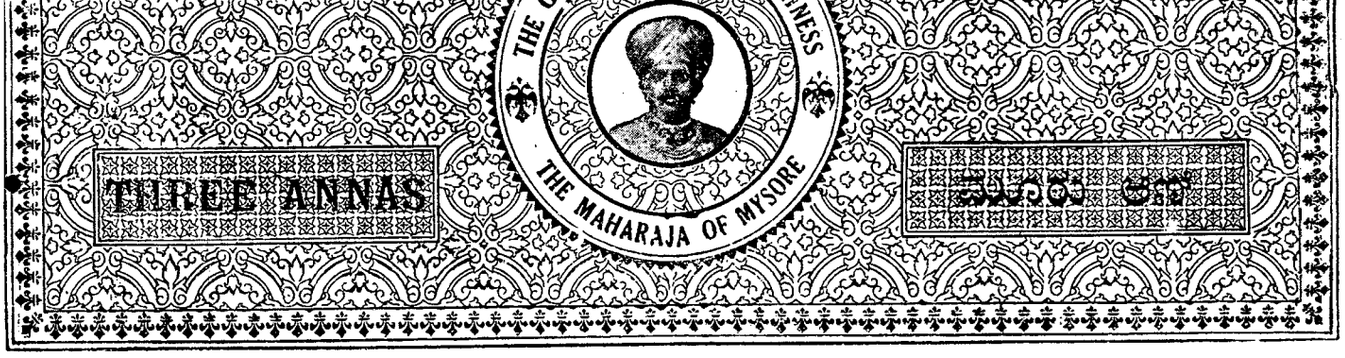
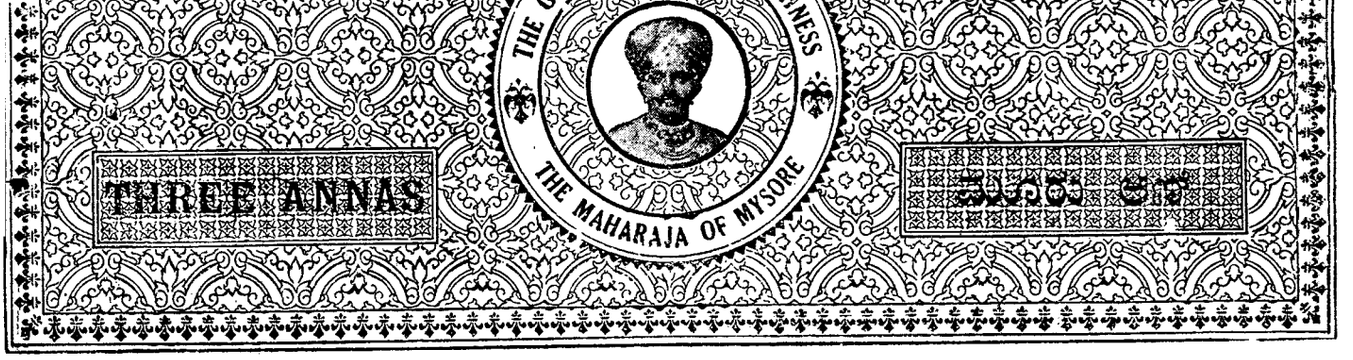


recover all arrears of land revenue is the Deputy Commissioner's business and, it may be said, in some respects his primar business. He is primarily a Revenue Officer, whose duty it is to collect revenue; and under that chapter the actions to be taken by the Deputy Commissioner. That being so, i would be a distortion of the provisions of that chapter to represent the Deputy Commissioner as somehow elevated to the position of an official distinct from the Government, before whom the Government has to make its applicat and representations. It is no more easy I think to find any indication that the Deputy Commissioner is such an ir pendent and outside authority or official, as Mr. Somasekhara Rao suggests, than it is to find that he is in the ----



the position of a Revenue Court, as the learned Advocate General has suggested.

Mr. Somasekhara Rao has impressed upon us, what I think is quite clear, that the provisions of Section 193 of the Land Revenue Code are very wide. It will be see that they can be used for recovering a very large number different kinds of debts due to the Government; and by statutory provisions they can be used for recovering deb due to other bodies. That is one of the characteristics section. But I do not think it helps the argument for the Defendants in this case, because, though the machinery, which has been set up by that chapter of the Code primarily for the recovery of land revenue arrears, is by the provisions-

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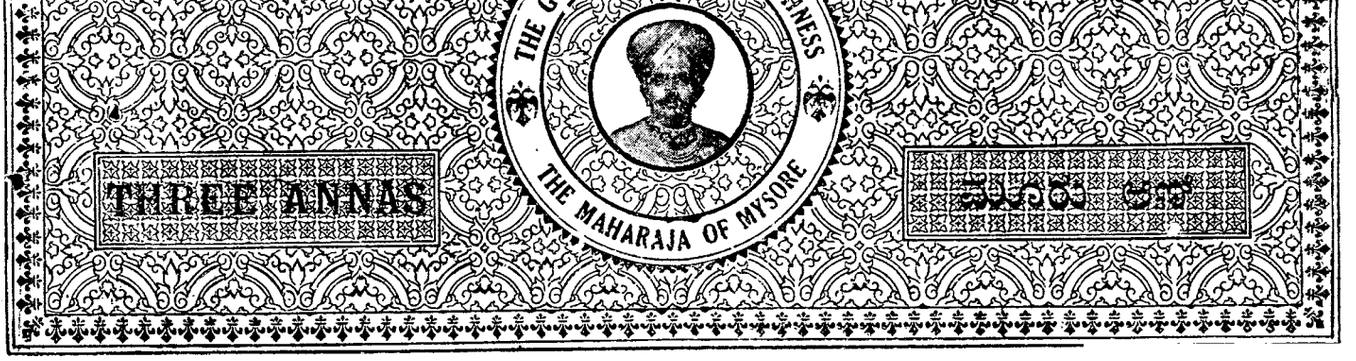
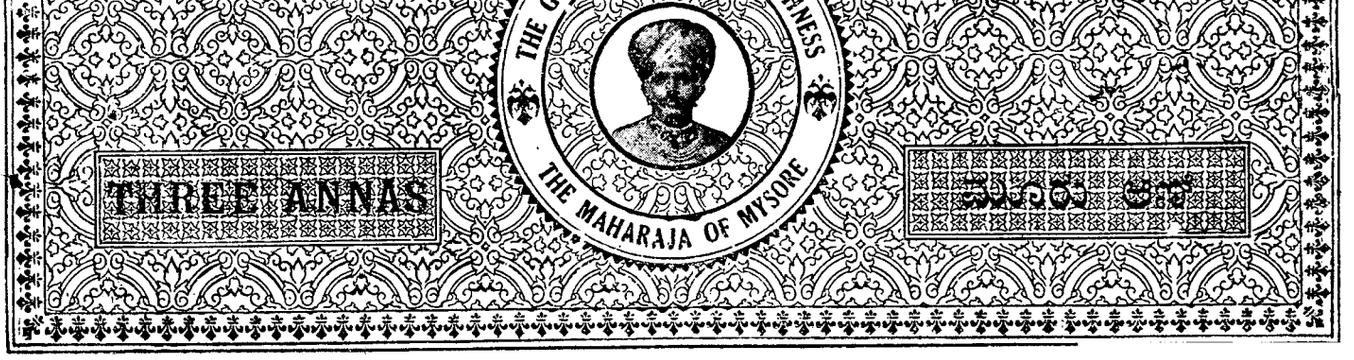
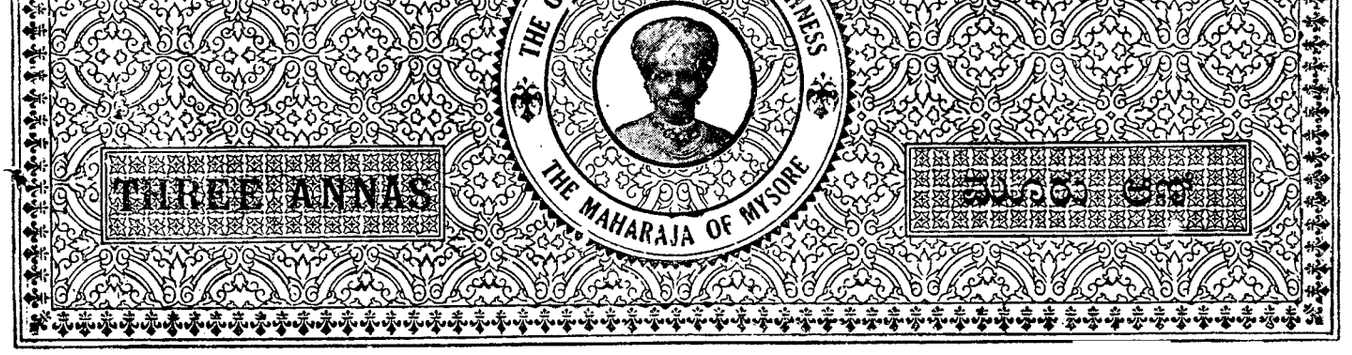


provisions of Section 193 and other statutory provisions usable for the recovery of other amounts, that does not alter the character of the machinery. That does not in any way change the intention or the meaning of the provi which, as I understand them, give the Government themsel power to recover those dues either for themselves ~~power t~~ ~~recover those dues either for themselves~~ or for other bodies. I cannot agree with any of the suggestions that we can find in Chapter XI some other authority, which exercises the - powers of the Chapter, than the Government themselves or even, as the learned Advocate-General put it in one part of his argument, that we can find that the Government have a dual personality so that the Government can sit on two-



two chairs at the same time. All those refinements appe to me to be against the plain intention of the chapter. that is the correct way to look at the provisions of the chapter, then Mr. Lakshminarayana Rao's argument holds go The Government when exercising their power of sale for - recovery of their dues or the dues of other bodies cannot sell property to the Government in the absence of some -- statutory provision which makes that possible. There no such statutory provision in the Code itself.

But Mr. Somasekhara Rao has urged that there is su a provision in a rule made under the Land Revenue Code -- Rule 99 of the Land Revenue Rules. It is a long rule; but we are only concerned with the second part of it, wh:



which runs:- "Where, owing to combination or other causes, there are either no bidders or the bids offered are not ad quate, the officer conducting the sale shall postpon it, and report the matter for the orders of the Deputy Commissioner, who, in the case of land forfeited under Section 159, may direct that the land be either resumed and dealt with as an unoccupied land or disposed of in such other manner as he may deem proper, and in the case of other property, make such orders regarding the purchase of the property on behalf of Government or its disposal by a re-sale or otherwise, as x may seem to him to be suitable." It is the latter part of that paragraph of the rule on which Mr. Somasekhara Rao lays stress. It canot be suggested that in this case the-

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the procedure indicated in the latter part of that paragraph was followed, because the record shows that it was at the revenue sale itself, held by the Sub-Divisional Officer o the 4th of March 1936, that the bid of the Officer in Charge of the Sandalwood Oil Factory was accepted, not that the proceedings were adjourned and the Deputy Commissioner's - orders were taken afterwards. But Mr. Somasekhara Rao would make use of what is said in that rule to show that is possible for the Government to be the purchaser at or in consequence of a revenue sale. If the rule is valid, would be the latter part of the paragraph I have read tha would apply to the property with which we are concerned, i.e. the two houses in Mysore, which certainly could not

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not be forfeited to the Government as land on which the land revenue had not been paid. But Mr. Somasekhara Rao has been quite unable to persuade me that the provision of that rule, under which the purchase by the Government of property put up for sale in a Government auction is possible, is valid. The rule appears to me to be a rule which in that part of it the Government have no power to make under the provisions of the Land Revenue Code. The rule-making power is given to the Government under Section 233 of the Code. That is a long section, which sets out Clauses (a) to (m) specifying in what matters and for what purposes the Government may make rules. And then comes Clause (n), under which, if under anything, this part of Rule 99 could be made and which-

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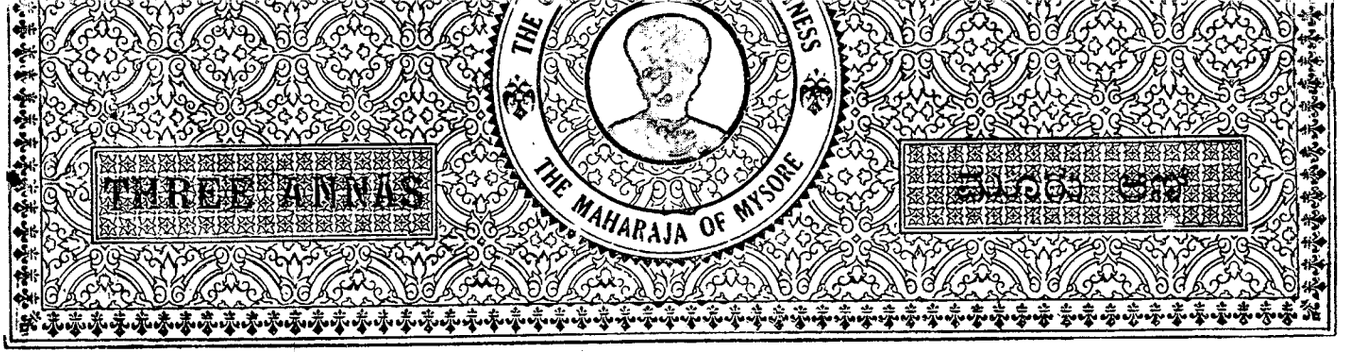
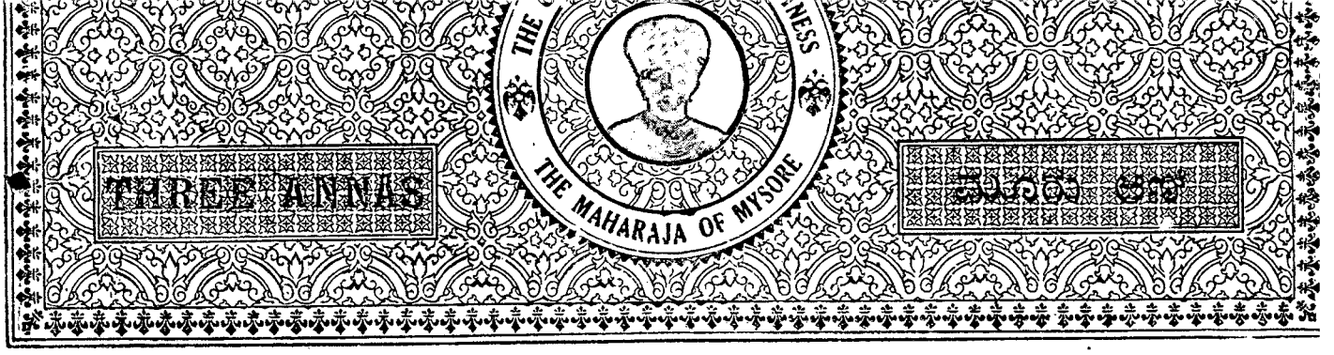
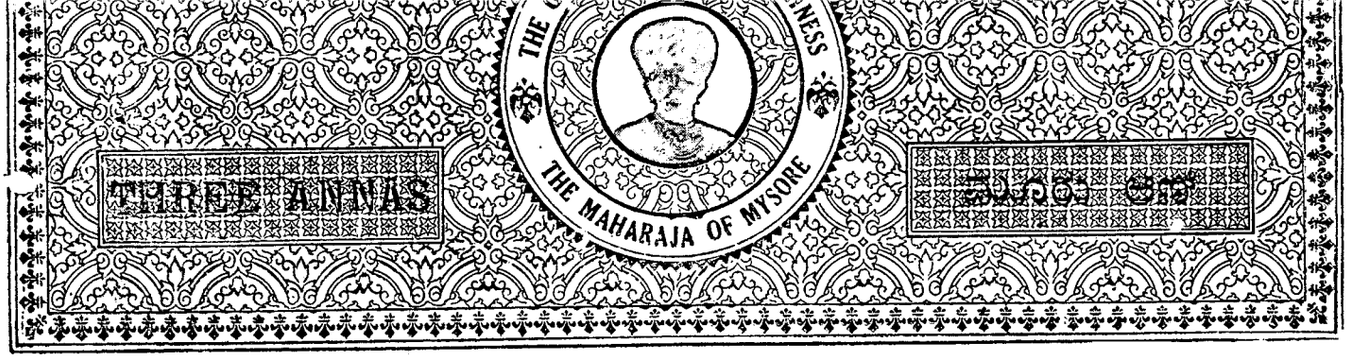


which runs "generally for the guidance of all persons in matters connected with the enforcement of this Regulation or in cases not expressly provided for therein". That clause will certainly give the Government no power to mak rules extending the provisions of the Code. They can ma rules for carrying out explicity what is implicit in the Code or any of the purposes explicitly set out in the Cod but they cannot add to the Code so as to give themselves power to do something, which is not given expressly or -- implicitly in the Code itself. If there is nothing in th Code to indicate that the Government can be held by a fic in any circumstances to buy property for themselves -- an I can find nothing in the Code to that effect -- then it



s quite useless for the Government to make a rule purpo:
o give themselves that power. That would clearly be
oing beyond the power given to them for rule-making by
ection 233 of the Code. And far from there being any-
hing, which could possibly suggest any shadow of justif:
cation for the Government making a rule that in some su
fictional way they can purchase from themselves, it sho
be remembered that the Code prescribes that, when the G
ment sells property under Chapter XI, the sale shall be
auction. The intention obviously is public auction.
are provisions in regard to the way in which place and
should be notified and so on. The provision that the sa
are to be by auction itself I think clearly implies that-



that Government cannot appropriate the property to itself If the Government is to sell at all, the sale must be to some one else.

I think we must accept Mr. Lakshminarayana Rao's co tention that the Land Revenue Code does not make it possi for the Government to be in the position of purchasing pr perty sold by the Government or by Government Officersund he machinery of Chapter XI of the Land Revenue Code. do not hink we need regret that result in any way. If Government find no bidder for land on which arrears of re ave to be recovered, the Code provides for the forfeitin of tha. ___d to the Government. If in those other inst to which the provisions of Chapter XI of the Code have be

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been extended, where the Government are recovering other amounts due to them, it is found impossible for the Government to sell the property to any one else because there are no bidders at an auction or the bids are absurdly low, then the Government are not without a remedy. The only result will be that the short-cut and convenient procedure for the recovery of Government dues by the machinery set up under Chapter XI of the Land Revenue Code fails, and the Government like any one else must go to a civil Court to recover what is due. When the Government go to a civil Court, then as a party there is no difficulty in getting permission in proper cases to buy at the Court-auction. There is no need to suppose that there is any fatal gap i

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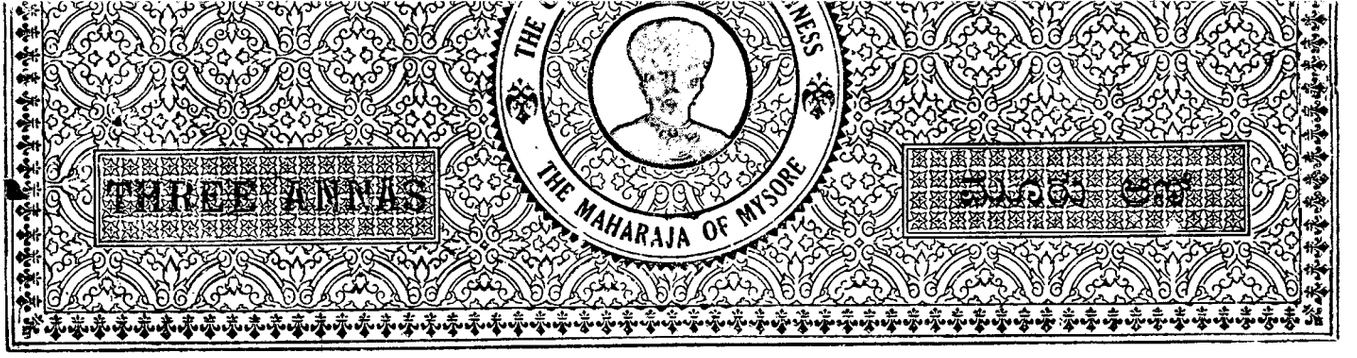

in the machinery provided by Chapter XI of the Land Rever
Code or that it is necessary to supplement it. On the -
contrary, if the Government were able to buy property at
a Government sale conducted by Government Officers, I thi
it is clear that the way would be open for very grave abu
and oppression. And indeed what has happened in this ca
illustrates that.

In my opinion the Government made no valid purchase of the two houses, with which we are concerned: they are still only mortgagees with a right to recover Rupees 6,0(in accordance with Exhibit VI: we must allow this appeal to the extent of making a decree for redemption in favour of the Bank for Rupees 6,000/-, to be paid within two months-

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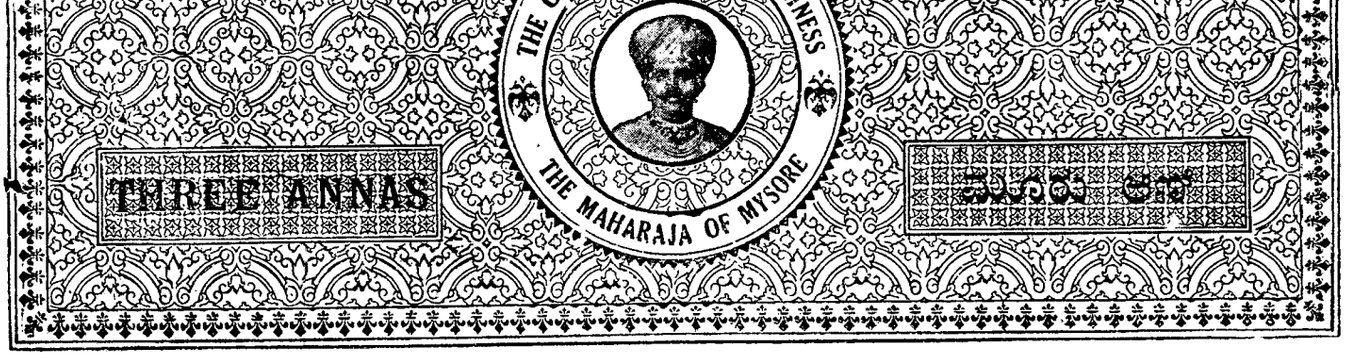
THE MAHARAJA OF MYSORE

months from this date, the rest of the Bank's rather inexplicable claim being dismissed.

In regard to costs Mr. Somasekhara Rao has represented not at all unreasonably that, although Mr. Lakshminarayana Rao has been able to urge a plain and effective argument in this Court that argument does not appear to have been urged in the trial Court, and it is not certainly brought out anywhere in the rather elaborate pleadings in this case. I think the result of that is that at any rate Mr. Somasekhara Rao's client need not be required to pay any costs. So far as the Bank's claim against the Government is concerned in my opinion the Bank must get from the Government costs calculated on the amount of Rupees 6,000/- in both Courts and in all other respects the parties should bear their--



their own costs throughout.

MR. JUSTICE S. VENKATA RANGA IYENGAR :-

I agree and wish to add only a few words. In England, where a mortgagee has got the power of sale without the intervention of Court, it has been well settled that he - cannot buy the mortgaged property either himself or with others or by an agent, on the principle that a man cannot sell to himself. Among the numerous authorities that lay down that proposition I may just refer to Hodson v. Deans, 2 Ch. D. (1903) 647, where the case-law on the point has been reviewed and the law has been summarised as follows at page 652 :- "Now what is the law in a case of this - sort? It is true that a mortgagee is not a trustee for

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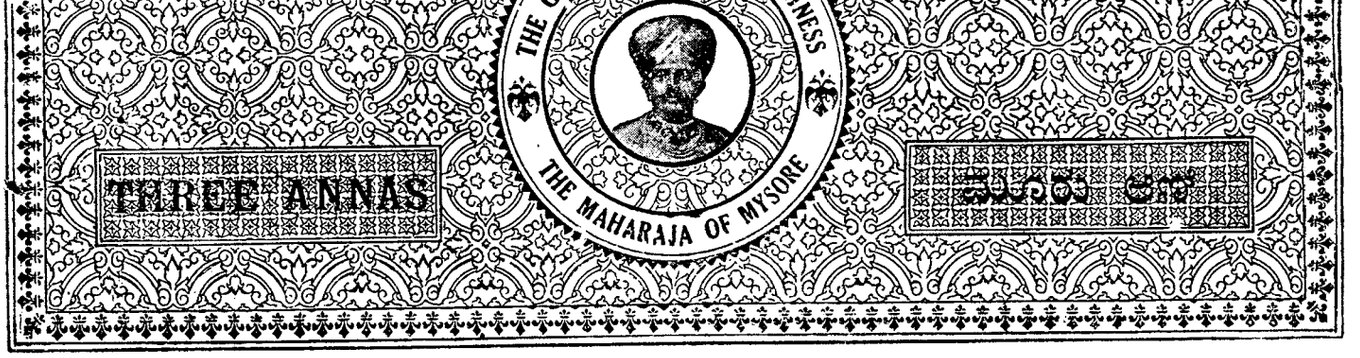

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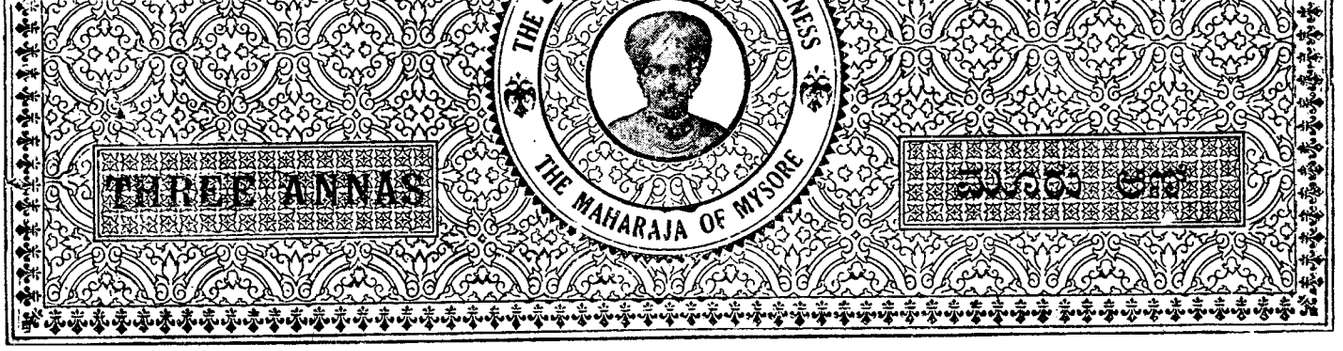
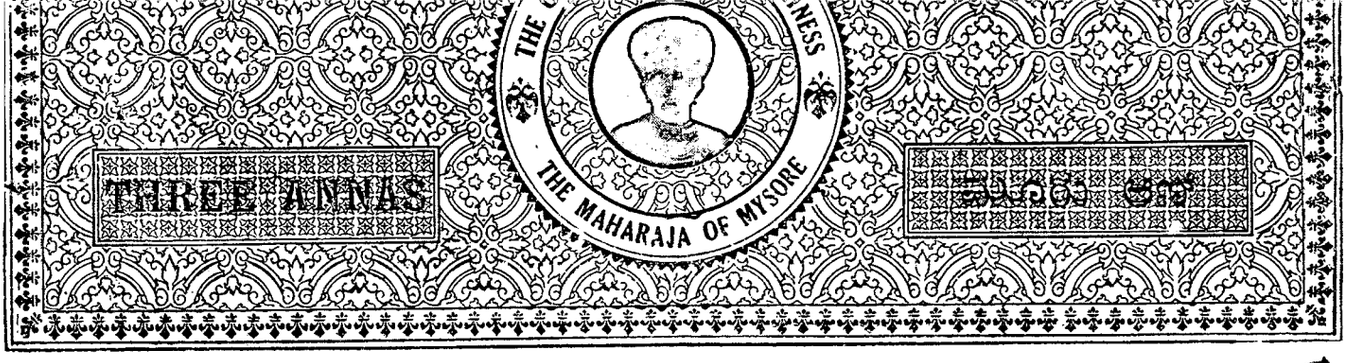
for sale in the ordinary sense. He has rights of his own but he is under certain obligations to the mortgagor, especially where the security is ample. ..... A mortgagee may, under certain circumstances, sell to his own solicitor; but the solicitor or agent managing the sale cannot as against the mortgagor sell to himself. In Farrar v. Farrars, Limited, 40 Ch. D. 409, Lindley, Lord Justice said: 'It is perfectly well settled that a mortgagee with a power of sale cannot sell to himself either alone or with others, nor to a trustee for himself..... nor to any one employed by him to conduct the sale ..... A sale by a person to himself is no sale at all, and a power of sale does not authorize the donee of the power to take the property subject to it at a pric



price fixed by himself, even although such price be the full value of the property. Such a transaction is not an exercise of the power'. So, too, in Martinson v. Clowes, 21 Ch.D 857 North J. said: 'It is quite clear that a mortgagee exercising his power of sale cannot purchase the property on his own account, and I think it is clear also that the solicitor or agent of such mortgagee acting for him in th matter of the sale cannot do so either'. Then, again, as to agents, in the case of In re Bloye's Trust, (1849) 1 Mac. and G.486, 494, Lord Cottenham said: "If the principal is incapacitated, can the agent do that which the principal could not?' And further on, quoting Lord Eldon in Downes v. Grazebrook, (1817) 3 Mer. 200 , he asks, 'whether if a-



a party is incapacitated from purchasing he can employ an agent to do that which he could not do himself; and whet that agent had a power to purchase which his principal ha not; it would be the most absurd distinction in the worl The same principal has been followed in British India in cases where Section 69 of the Transfer of Property Act is applicable. (Vide Vallabhadas Mulji v. Pranshankar, A.I 1929 Bombay 24, and Mulraj Virji v. Nainmal Pratapmal, A. 1942 Bombay 46). It is unnecessary on this occasion to express any opinion on the question whether, in the abse in the Transfer of Property Act that is in force in Myso of a provision analogous to Section 69 of the British Inc

the mortgaged property without the intervention of Court, under an express power of sale conferred by the mortgage-deed on the mortgagee. But there can be no doubt whatever that ever since the amendment of Section 193 of the Land Revenue Code by Act VI of 1905, the Government as mortgagee has the power to have the mortgaged property sold through its officers of the Revenue Department in the manner prescribed in Chapter XI of the Land Revenue Code, as if the money due, under the mortgage were an arrear of land revenue, in cases where such power is conferred under the mortgage-deed. Even to such cases the rule that a mortgagee cannot purchase the mortgaged property himself either directly or indirectly equally applies, as that rule is not a technical one but ·

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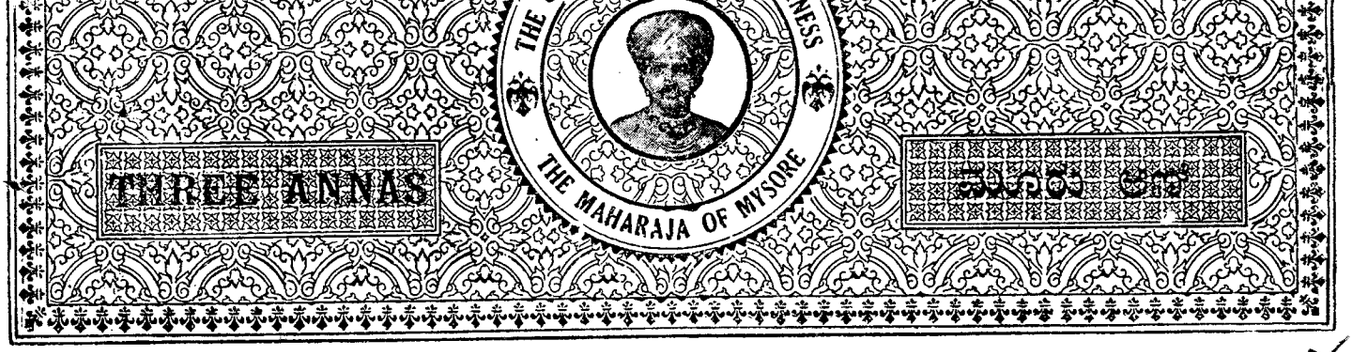
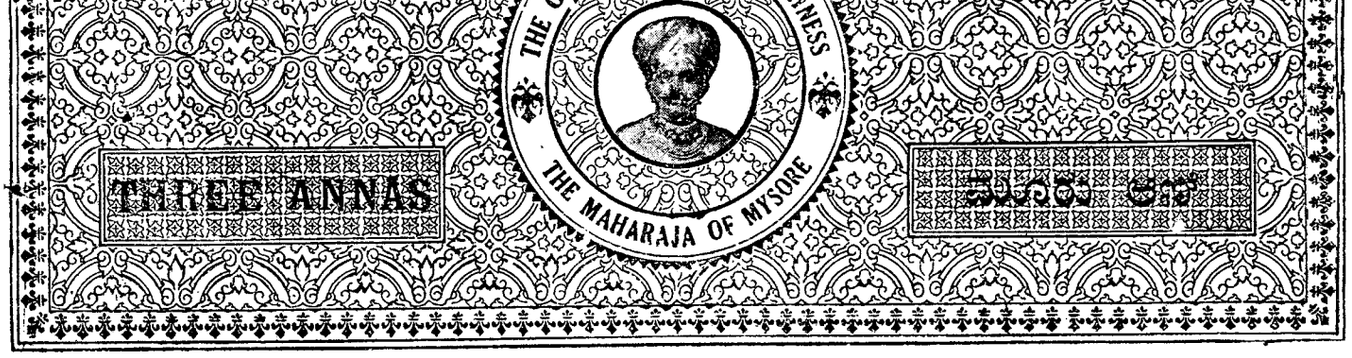


but is based on the general principle that a man cannot sell to himself. In the absence of any provision in Chapter XI of the Land Revenue Code expressly or impliedly empowering the Government to purchase property put up for sale by its Revenue Officers for realization of the amount that can be recovered as an arrear of land revenue, I agree with th Learned Chief Justice that in this case the Government could not purchase either directly or indirectly the mortgaged property putup for sale. I also respectfully agree with the learned Chief Justice that the following portion -- "and in the case of other property make such orders regarding the purchase of the property on behalf of Government" -- in Rule 99(b) of the rules in the Mysore Land Revenue Code i:



is beyond the rule-making power of the Government under - Section 233 of the Land Revenue Code. The following -- observation -- "In this connection the distinction made i Rule 99(a) (probably a misprint for (b)) between forfeited lands and other property in cases of absence or inadequac of bids, is significant, and shows that purchase on behal of Government is only permitted in respect of property no declared to be forfeited" in Balaji Rao alias Balakrishna Rao v. Sitharamayya, 18 Mysore Chief Court Reports 76, relied on by Mr. Somasekhara Rao, is not of much help inasmuch as the question whether that part of Rule 99(b) is beyond the rule-making power of the Government or not was not for -- consideration before the learned Judges in that case, and

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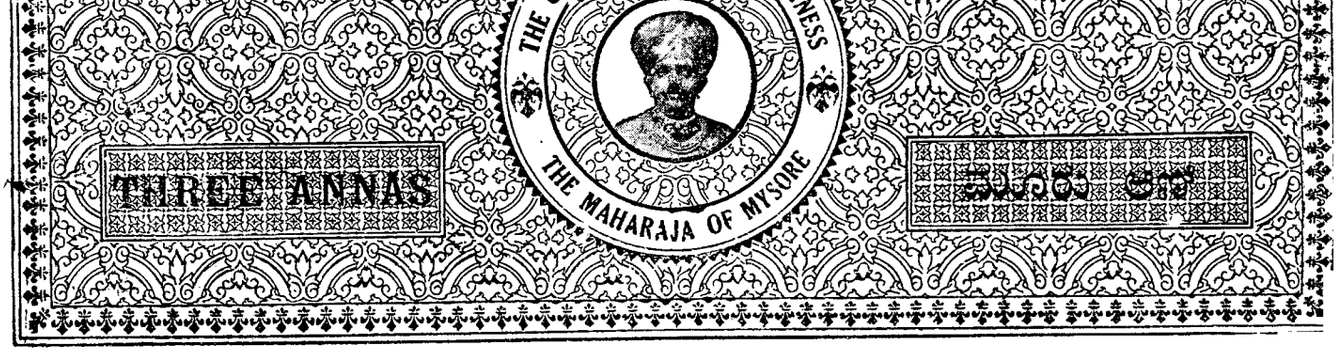

and the direct point that arose for decision and was decided in that case was that neither the Mysore Land Revenue Code nor the rules thereunder contemplate the purchase on behalf of Government of land which has been forfeited by reason of non-payment of the land revenue. In cases where a mortgagee who has power to sell purchases the property himself either directly or indirectly in exercise of that power, it has always been held that the sale is ineffectual or inoperative. In other words, it is as good as sale not having taken place at all. That conclusion can also be reached by another way in this case. It is found from the sale-proclamation, Exhibit XII, that the properties had been advertised to be sold at the spot. One of the houses to be sold was situate-

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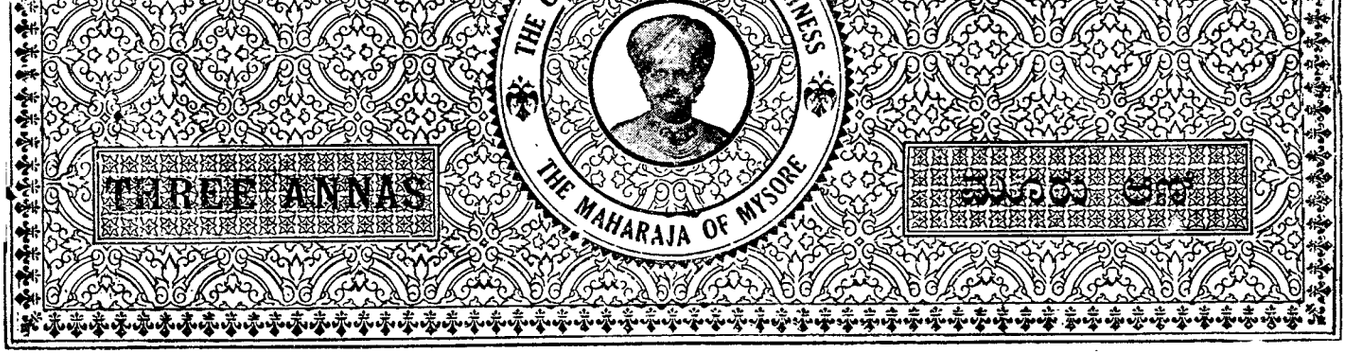
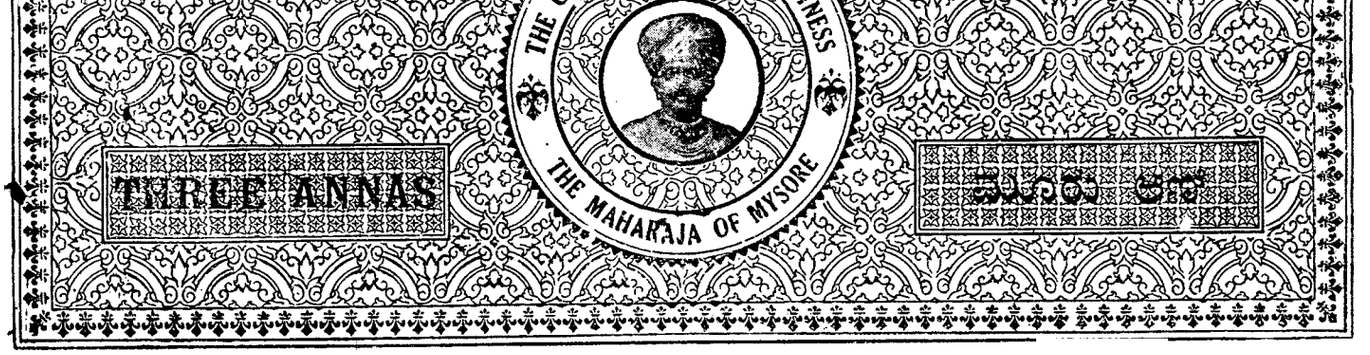


situate in Lakshmipuram and the other in Chamaraj Mohalla Mysore City. The sale was not held at the spots where t houses were situate, but was held in the Taluk Office. W a sale by public auction that is advertised to be held at a particular place is not held at that place but is held at some other place, it cannot at all, in my opinion, be regarded as a sale. When we reach the conclusion that there was no sale in this case, it follows that the mortgage as well as the equity of redemption are still alive. The argument of Mr. Somasekhara Rao that Article 12 of the Limitation Act was a bar to the suit on the ground that the Bank did not get the revenue sale set aside within one year from the date of the sale, fails, because the Bank was under n obligation to get rid of the sale, inasmuch as there was-



was really no sale. It is undisputed that the suit for redemption of the mortgage is not barred by time. As, fo: the reasons already mentioned, the mortgage evidenced by Exhibit VI is still alive, there can be no doubt whatever that the Plaintiff - Bank is entitled to redeem that mortgage.

There is nothing more that I can usefully add to the judgment of the learned Chief Justice just now delivered and I agree to the decree proposed therein.

"(Transcript)"

(Sd) N. SAMAIENGAR,

Registrar.

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DEPUTY REGISTRAR IN CHARGE.

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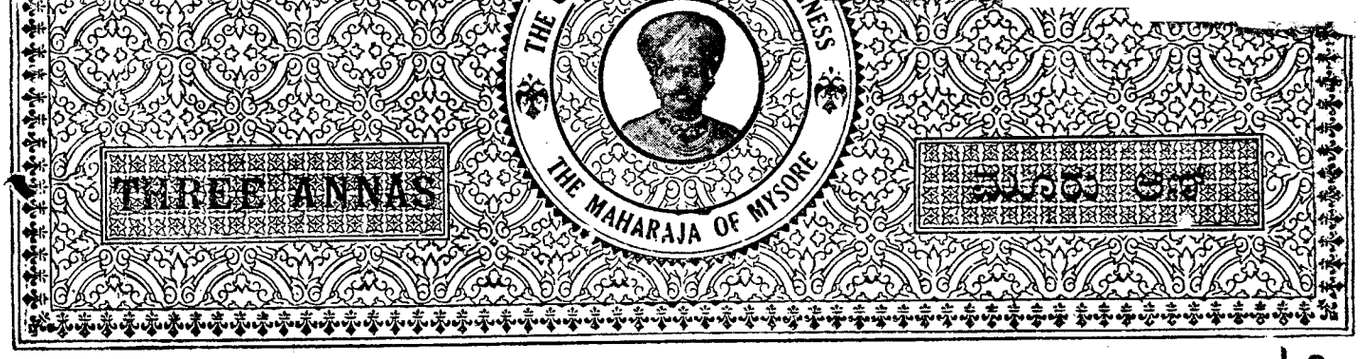

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Decree of Appellate Court,
(O. 41, R.35, Code of
Civil Procedure).

H.C. No. 32.

732.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

P R E S E N T

SIR D'ARCY REILLY, CHIEF JUSTICE.

and

MR. JUSTICE S. VENKATA RANGA IYENGAR.

REGULAR APPEAL NO.128 OF 1940-1941.

APPELLANT :- :-VS-: RESPONDENTS :-

The Bank of Mysore Ltd., by its Manager, Mr. F.L. Peradon, Bangalore City.

(Plaintiff).

1. The Government of Mysore by the Chief Secretary to the Government of Mysore, Bangalore, (Defendant 1).

2. M.V. Veerendra Kumariah, son of late Mr. Vardhamaniah No.939, Lakshmipuram, Mysore City. (Defendant 2).

This---

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This Appeal from the decree of the Court of the District Judge, Mysore in Original Suit Number 2 of 1939-1940 on its file dated the 30th day of November 1940, coming on for - final hearing on the 8th October 1942, in the presence of Mr. M.Lakshminarayana Rao and Mr. Mir Iqbel Hussain Advocates for the Appellant and Mr. The Advocate General/and Mr. M.P. Somasekhara Rao, Advocate for Respondent 2. Advocate for Respondent 1,

In reversal of the Decree of the Court of the District Judge, Mysore in Original Suit Number 2 of 1939-1940 it is hereby declared that the amount due to Respondent 1 (Defendant 1) is Rupees 6,000/-, and it is decreed as follows :-

1. That, if the Plaintiff (Appellant) pays into Court the amount so declared due on or before the 8th day of M--

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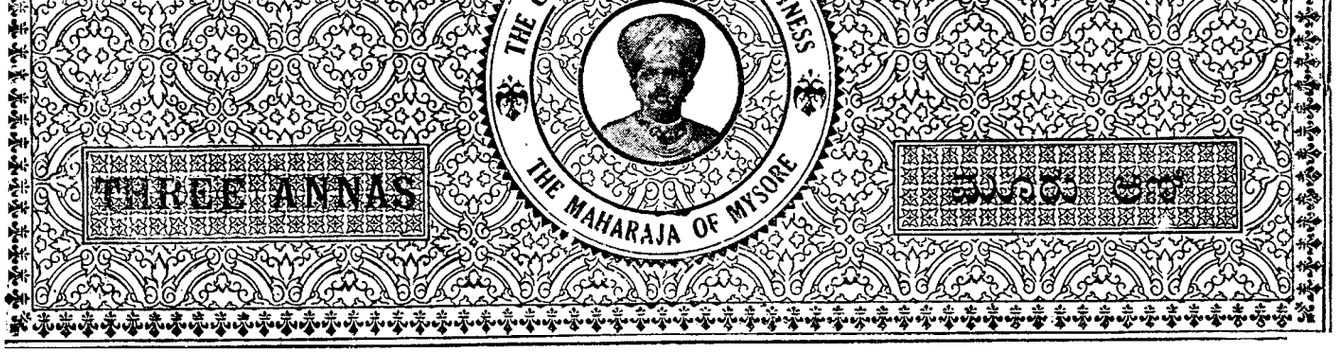

of December 1942, the Resposndents (Defendants) shall deliver up to the Plaintiff (Appellant) or to such person as he - appoints, all documents in their possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the Plaintiff(Appellant) free from the mortgage (under Exhibit VI) and from all incumbrances created by the Defendants (Respondents) or any person claim - ing under them and shall put the Plaintiff (Appellant) in possession of the property;

2. That, if such payment is not made on or before the said 8th day of December 1942, the mortgage property shall be sold.

And it is further ordered and decreed that the rest-

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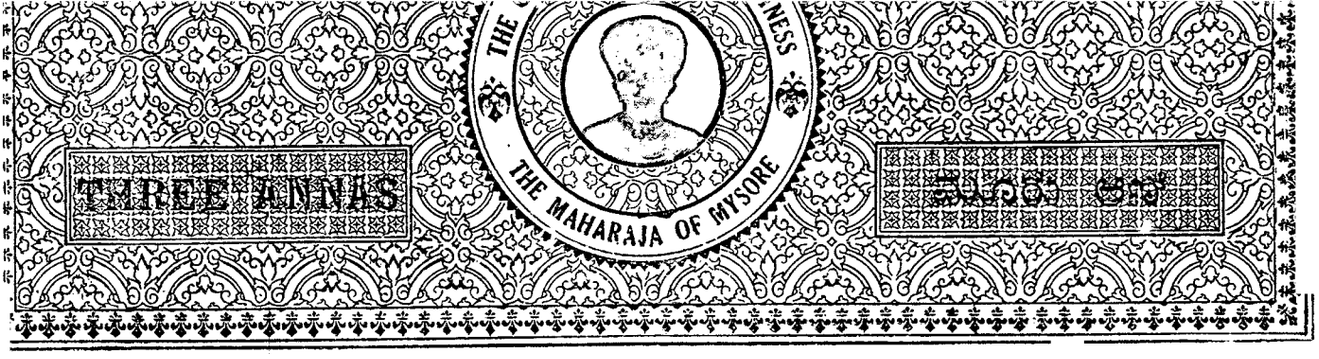

rest of the Plaintiff's suit beand is hereby dismissed.

And it is further ordered and decreed that Respondent1 (Defendant 1) aforesaid do pay to the Appellant (Plaintiff) aforesaid the sum of Rupees 801/- being the amount of costs incurred by the latter in this Court calculated on Rupees 6,000/- with interest thereon at 6 per cent per annum from this date until the date of realisation.

And it is further ordered and decreed that Respondent 1 (Defendant1) aforesaid do pay to the Appellant (Plaintiff) aforesaid the sum of Rupees 700-15-0 being the amount of costs incurred in the Lower Court calculated on Rupees 6,000/- with interest thereon at 6 per cent per annum from the date of the decree of the said Lower Court to the date of ----

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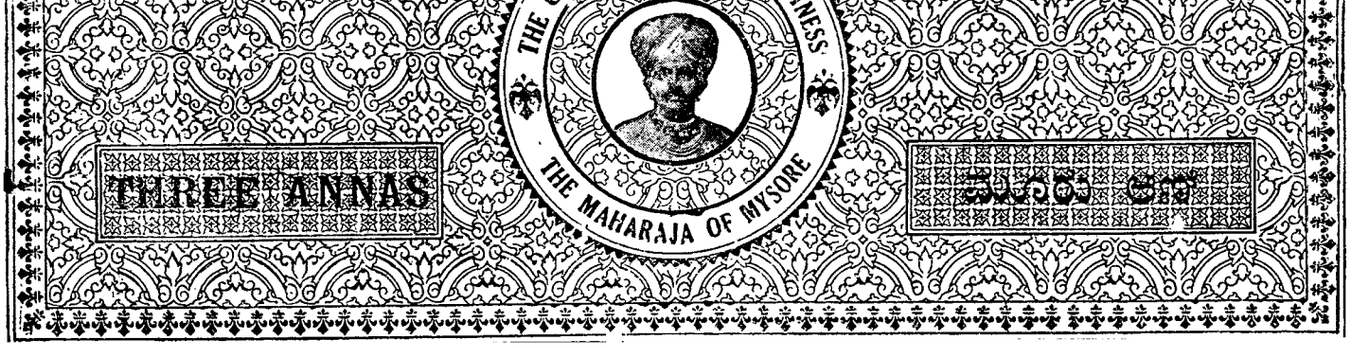

of realisation.

And it is further ordered and decreed that in regard to the rest of the suit the parties do bear their own costs of the suit and this appeal.

Given under my hand and the seal of this Court, this 8th day of October 1942.

(SD) N. SAMAIENGAR,
Registrar.

MEMORANDUM OF COSTS INCURRED IN THIS APPEAL.

	By the Appellant. (Plaintiff).			By the Respondents (Defendants).		
	Rs.	A.	P.	Rs.	A.	P.
Court-fee on Memo of Appeal.	400	0	0.		-	
" Application	2	1	0.		-	
" Power of Attorney.	2	0	0.	2	0	0.

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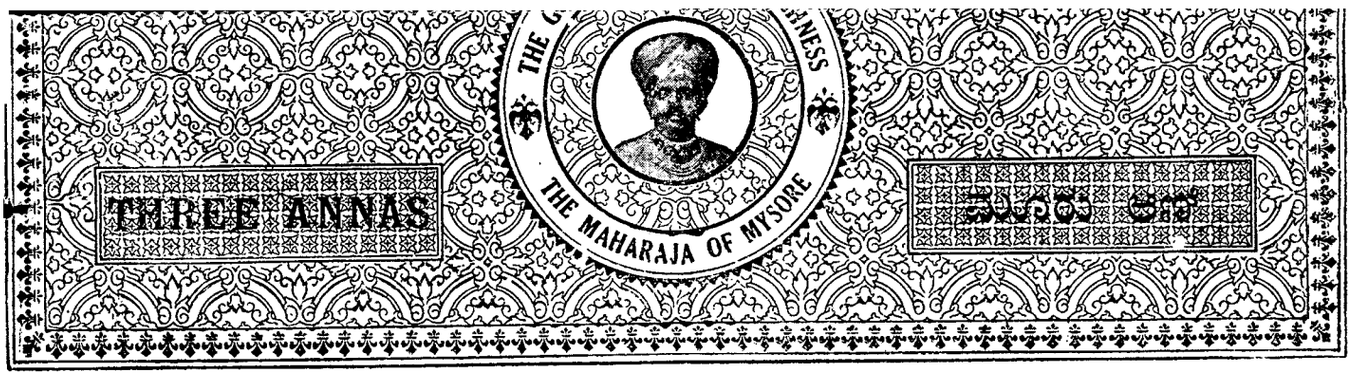

Court-fee on Processes.	1	4	0.	0	0.
Copies of Decree and Judgment.	1	10	0.		
Advocate's Fee.	270	0	0.		
Costs of Adjournment.	0	0	0.		
Fees for copying.	10	8	0.		
Special Copying Charges.	14	13	0.		
Fees for translation.	0	0	0.		
Cost on Remand.	0	0	0.		
Printing Charges.	98	12	0.		
TOTAL....	801	0	0.	2 0	0.

(SD) V. NARASIMHA MURTHY,
Deputy Registrar in Charge.

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DEPUTY REGISTRAR IN CHARGE.